the weekly
Standard

APRIL 17, 2006 $3.95

OVERRULING ROE?
ROBERT F. NAGEL

WITHOUT DELAY

Hammerless House Republicans
FRED BARNES

What *was* his staff up to anyway?
MATTHEW CONTINETTI

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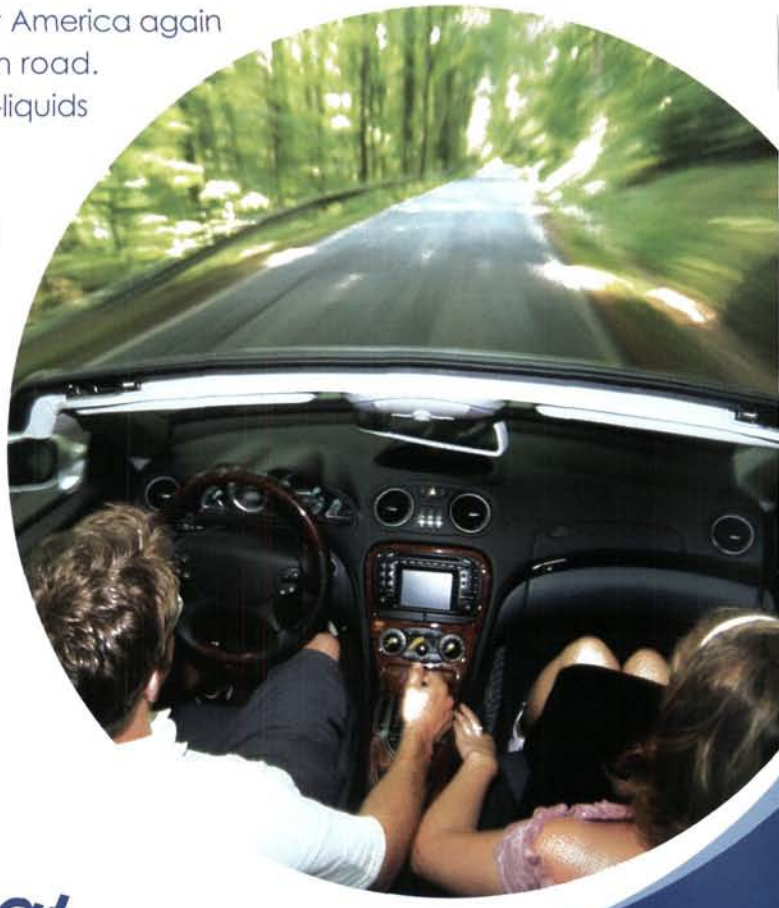

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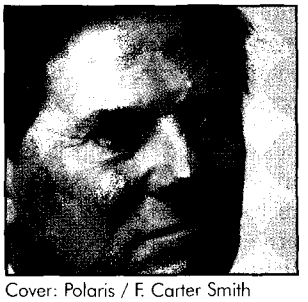

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But Is It Good for Harvard (cont.)

Last month political scientists John J. Mearsheimer (University of Chicago) and Stephen M. Walt (Harvard) made public an 82-page "working paper" on "The Israel Lobby and U.S. Foreign Policy," which purported to describe how a "core" group of "American Jews" are infiltrating "the corridors of power" and "manipulating the media" in order to distort U.S. foreign policy in favor of "racist" and "brutal" Israel. The infiltrators' coreligionists are thus given "a free hand" to "persecute" Palestinians—even as "the United States does most of the fighting, dying, rebuilding, and paying."

Much public reaction to this astonishing document has concerned its authors' apparent . . . um . . . preoccupation with Jewish people. But Mearsheimer and Walt seem almost to welcome that complaint—as evidence that a grand conspiracy really exists. Isn't it standard practice, they write, for "The Lobby" to "squelch debate about Israel" by "suggesting that critics are anti-Semites"? See? See?

No point in feeding these gentlemen's paranoia.

Especially since it's so much more fun simply to point out how craptacular their reasoning is. A tip of THE SCRAPBOOK's cap to Near East expert and blogger Martin Kramer (*sandbox.blog-city.com*) for his mordant analysis of one particularly fine bit in the Walt/Mearsheimer fine print. "One of the nuttiest passages in 'The Israel Lobby,'" writes Kramer, "occurs in the very first footnote":

> The mere existence of the [pro-Israel] Lobby suggests that unconditional support for Israel is not in the American national interest. If it was, one would not need an organized special interest group to bring it about. But because Israel is a strategic and moral liability, it takes relentless political pressure to keep U.S. support intact.

"Other commentators," Kramer goes on, "have pointed to the absurdity of this statement, since every conceivable special interest has a lobby in Washington, and they can't *all* be working against the national interest." Indeed,

> you can be absolutely sure no professor will make that assertion about one of the most powerful lobbies in Washington: the higher education lobby. Start with Harvard's own Office of Federal Relations, conveniently described on its own website. There we learn the following: "Harvard's federal relations teams in Cambridge and Washington, D.C., work to maintain a positive and ongoing relationship between Harvard and the Congressional and Executive branches of government."

There you have it, Professor Walt! Evidence that federal support for Harvard is not in the American national interest! If it was, Harvard would not need federal relations "teams" operating out of Cambridge and Washington to bring it about. But because so many Harvard professors are intellectual and moral liabilities, it takes relentless political pressure to keep federal support intact. . . .

But it's not just Harvard. Every major research university, and lots of lesser ones, have offices of "government relations"—in-house lobbies that often keep branches in Washington. . . . For example, the *Chicago Tribune* reported in January that the University of Chicago has hired the Federalist Group, a Washington lobbying firm, to help it win what is supposed to be a merit-based competition to manage the Argonne National Laboratory. The university is applying political pressure to preserve its established hold on the laboratory. What say you, Professor Mearsheimer? ♦

Dateline NBC's Anti-NASCAR Bias

Concerned that Americans might be engaged in anti-Muslim stereotyping, *Dateline NBC* producers had an unusual brainstorm: Let's stereotype Americans! More specifically, the class of Americans that enjoys stock car racing.

As we learned last week from Michelle Malkin's blog, NBC sent an undercover camera crew to NASCAR's April 2 DIRECTV 500 at the Martinsville Speedway in southern Virginia. NBC confirmed to an AP reporter that it had sent "Muslim-looking men" to the race "along with a camera crew to film fans' reactions." Apparently those mouth-breathing NASCAR fans (as *Dateline* imagines them) didn't take the bait. They "walked around and no one bothered them," NASCAR spokesman Ramsey Poston told the AP. Malkin got a few emails from readers who attended the race. "Woody B." wrote that he had noticed the NBC plants: "They never seemed to be going anywhere in particular. To the credit of NASCAR fans, I never did see someone do so much as a double take at their presence." Another reader, "Jerry W.," offered a useful tip to NBC: Try going to the Texas Motor Speedway. "The Texas track is much larger, with grandstand seating for over 140,000 and sufficient room in the infield for, by the track's estimate, 53,000 more people. The track prom-

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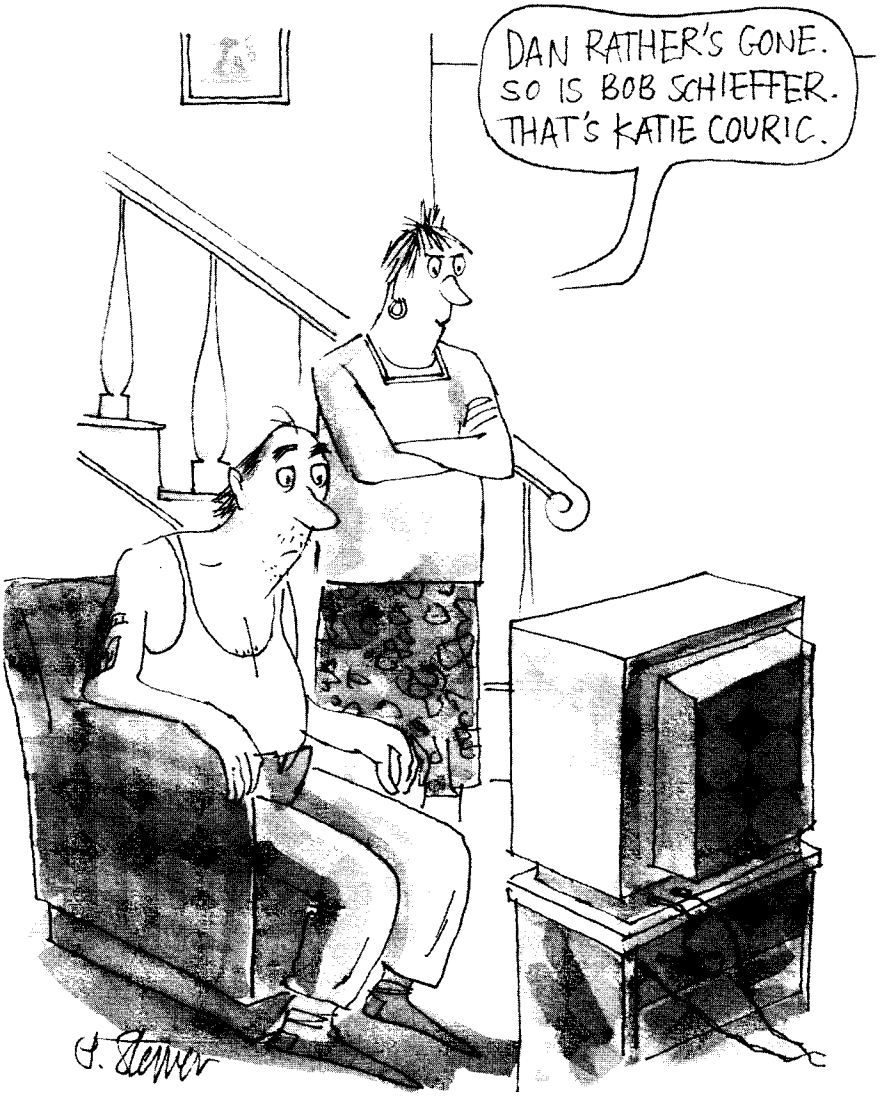

ises to be, if not completely sold out by race day, at least extremely close to it. Much easier to find someone willing to react 'suitably' for *Dateline* with that size crowd, plus the added 'bonus' of finding such behavior in the president's home state." But our favorite piece of advice came from "Chris S.": "My wife and I attended last weekend's NASCAR race in Martinsville, and had a wonderful time. But if NBC wants to guarantee they get a negative reaction to their 'plant,' all they need to do is put him in a Jeff Gordon T-shirt. The Dale Earnhardt Jr. fans will be sure to give him a rough time! His fans are definitely the most vocal of them all." ♦

English As a Pidgin Language

The *Houston Chronicle*'s Jennifer Radliffe reports on a high school teacher whose activism has landed him in hot water with his bosses: "Rudy Rios was stripped of his duties as junior varsity baseball coach at Chavez High School last week after using a district copying machine to make a flier encouraging Latino students to attend a rally protesting restrictions on illegal immigration.

"Rios, who still retains his duties as an English-as-a-second-language teacher, was copying and distributing a flier that read: 'We gots 2 stay together and protest against the new law that wants 2 be passed against all immigrants. We gots 2 show the U.S. that they aint [expletive] without us.'"

On the evidence, shouldn't they have instead retained him as a junior varsity baseball coach and stripped him of his duties as an English teacher? ♦

A Salute to McHugh

On looking through *The Mind Has Mountains: Reflections on Society and Psychiatry*, the new collection of essays by Paul McHugh, we're more convinced than ever of the importance of the author's contribution—not just to his own, sometimes troubled medical discipline, but also to the wider intellectual struggles and policy choices to which it relates.

For 26 years head of the department of psychiatry at Johns Hopkins, McHugh has labored to develop a science-based psychiatry that approaches mental illness from a stance he calls "constructive realism"—one that spurns Freudian mystification and presumption, yet confidently asserts that truth can be known. Read this book for sane—make that "wise"—clinically informed discussions of depression, Terri Schiavo, the "recovered memory" wars, treating minds as well as brains, the Hippocratic Oath, Shakespeare, and more. We only regret that we must forgo reviewing the volume, the price we pay for the honor of having originally published several of its finest pieces in our pages. ♦

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Casual

Driving Miss Gracie

I am facing a crisis in my marriage. When I came to work at The Weekly Standard, a little more than a year ago, one of the perquisites of the job was a parking space in the building garage. To anyone who commutes to work in a city of a certain size, I need not explain what this privilege means. For me, it was a genuine crossroads in life.

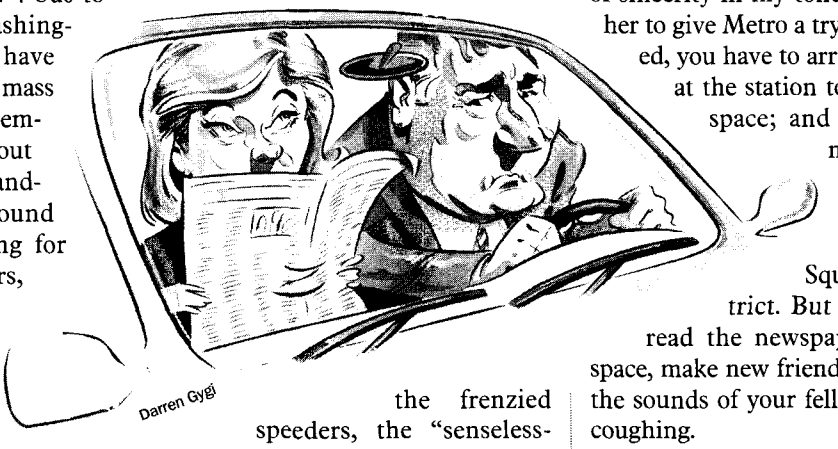
You see, from the day in September 1957 when my father deposited the seven-year-old me on an L-4 bus to Chevy Chase Circle (in Washington) for piano lessons, I have been a dutiful consumer of mass transit. In my self-pitying memory, I seem to have spent about a third of my childhood standing at bus stops in and around the nation's capital, waiting for what seemed like hours, oppressed by rain, snow, wilting heat, and importunate bums.

I am wearily familiar with the public transportation systems of such disparate metropolises as Lexington, Kentucky (LexTran) and Providence, Rhode Island (RIPTA). Even when I lived in Los Angeles—the land of freeways and convertibles—I rode back and forth to the *L.A. Times* building on a bus that went along Wilshire Boulevard. Since it opened in 1976, I have been a faithful rider on Washington's famous Metro, where the Orange Line ends just a seven-minute drive from the Terzian compound in bucolic Fairfax County, Virginia.

So when the opportunity arose to exchange a half-century's experience of trains and buses—and all the convenience, funny stories, and colorful characters—for a lone commute in my car, I hesitated for about three seconds.

The Weekly Standard, like many publications, has mildly eccentric working hours, and so I arrive in late morning to avoid the HOV lanes and deadly gridlock, and drive home at night, long after rush hour. It's a 20-mile journey, largely on an interstate highway, and a comparative breeze.

Rather to my surprise, I have found that I enjoy my half-hours of automotive solitude. I take note of my fellow commuters—the out-of-state license plates,



the frenzied speeders, the "senseless-acts-of-beauty" bumper stickers—and am free to listen to the same Thelonious Monk tunes over and over. I drive a tiny car, and so weaving in and out of downtown traffic is not too scarifying.

Now, however, my reverie is in danger of disruption. Last week my wife began an exciting new job which, for the first time in years, requires her to commute to an office in Washington—just a few blocks, as it happens, from my office. Needless to say, she was delighted by the prospect of our carpooling in the morning and, if possible, driving home together. I was somewhat less delighted.

In her defense, I can appreciate her point of view. My wife has many virtues—hazel eyes, lustrous red hair, a lethal sense of humor—but no sense of direction whatsoever. She is the sort of person who consults a map to traverse the driveway. Placed arbitrarily in the middle of Washington, D.C., she would not know whether to turn north, south, east, or upside-down to get to her destination. I have a much firmer grasp of the geography of her hometown (Nashville) than she does.

Clearly, driving herself to the office is not an option. During rush hour, the freeway that connects our home to the District is restricted to vehicles with at least two passengers, and the alternative routes are cruel and unusual punishment. Anyway, even if she crossed one of the many bridges that connect Virginia to Washington, I am not sure she wouldn't end up, eventually, somewhere in Delaware.

The other morning, with just a hint of sincerity in my tone, I encouraged her to give Metro a try. Yes, I conceded, you have to arrive rather early at the station to get a parking space; and yes, there are many, many stops between our town and McPherson Square in the District. But you can relax, read the newspaper, stare into space, make new friends, and listen to the sounds of your fellow commuters coughing.

When I spoke to her by telephone, later that day, she reported, with just a hint of iciness in her tone, that it had taken her one-and-a-half hours to get from our house to her office—approximately three times the duration of the ride in my car. The unspoken message was unmistakably clear.

What to do? I am reluctant to sacrifice 26-plus years of marriage for the sake of my solo commute. Our two children have yet to finish their education, and when she isn't spoiling my drive, my wife can be quite amiable and amusing. She has pledged not to mention household finances during our drive, and has told me I am welcome to play "Epistrophy" as many times as I want.

But at what volume?

Philip Terzian

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A for Ayn?

Reading John Podhoretz's review of *V for Vendetta* ("A for Absurd," March 20), I wondered why a man who so much supports America would aggressively denounce a woman who spent her life in awe of it. Podhoretz claims Ayn Rand's book *Atlas Shrugged* "is a primer in Rand's own ludicrous Objectivist philosophy." But what is ludicrous about upholding the Founding Fathers, a free market, and the pursuit of happiness? Rand's philosophy asserts principles that go beyond these basics, and for that she's a controversial figure. But Podhoretz fails to acknowledge her contributions to our system.

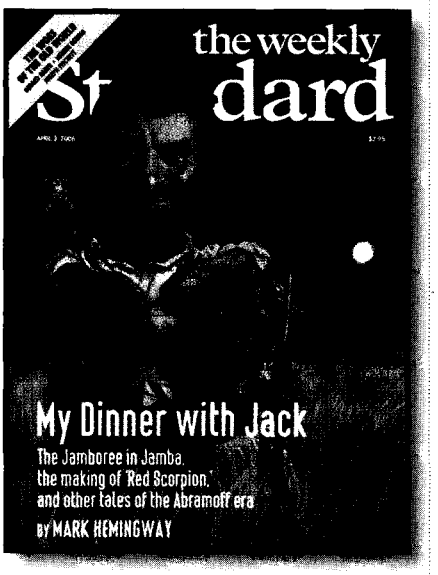
No fan of conservatives, Rand warned of their philosophical shallowness, their political opportunism, and their inconsistency. For all her extremism, Rand was right: Conservatives have sold out on too many issues; in so doing, they've become their own worst enemies. Conservatives like Podhoretz shouldn't poke fun at the likes of Rand. In fact, they should heed Rand's caveat well in advance of upcoming elections: In a battle among the morally correct and the morally misguided, the more consistent group will win.

Ruth Littmann-Ashkenazi
Cupertino, Calif.

John Podhoretz responds: Ayn Rand made a great contribution to the coffers of her publishing house and to her own bank account. Her contributions to "our system," however, are arguable, to say the least.

Fight over Gunfight

Tom Kelly's "Terrorism, 1950" (March 27) is, I think, a review of a different *American Gunfight* than the book I read. I understood this book as an incisive analysis of a firefight that showed both the stoic heroism of the Secret Service and the desperation of the Puerto Rican nationalists. Do I understand why Torresola and Collazo thought they could succeed or why they even attempted the assassination? Not in the slightest; nor do I understand the mentality that drives airplanes into buildings or explodes suicide vests in crowds of innocents. I do understand the man that stands and does the job he's sworn to do, even in moments of surprise and fear. Stephen Hunter and



John Bainbridge attempted to explain, not justify, the nationalists. That they didn't fully succeed says more about the misguided nature of the Puerto Rican nationalists than it does about the quality of this work.

Al Saibini
Stafford, Va.

Be Nice

I was saddened by the rancorous tone of Steven F. Hayward's "Pious the First" (March 20). Though I would not expect Hayward to write a favorable review of *Our Endangered Values*, I might have hoped he would provide reasoned dialogue and disagreement with President Carter's views.

Hayward's use of terms like "the smallness of Jimmy Carter's soul," "Carter's essential fraudulence," and "it is too much of a leap of faith to hope for any substance behind this man's moral vanity" is of no help in a debate with liberal ideas. Hayward makes religious judgments that are harsh and, I think, beyond the ability of men to make. Carter may be liberal to the core, he may be totally lacking a sense of "statecraft," but those criticisms should not lead directly to impugning his personal faith. Instead, the item-by-item response to *Our Endangered Values* in the second part of Hayward's review is an example of arguments I can confidently share with my liberal friends so that they will be convinced by ideas rather than put off by ad hominem attacks.

Preston Nowlin
Powhatan, Va.

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Show Your Teeth

When chided for a sharp or acerbic remark, Pat Moynihan used to invoke an old aphorism: "This animal is vicious; when he's attacked, he bites back." Moynihan would quote the French verse, which made the point seem more elegant (*Cet animal est très méchant; quand on l'attaque, il se défend*). We quote it in English, so the Bush administration will not be deterred from acting on its wisdom.

In other words: Mr. President, fight back.

Last week, news from the prosecution of Scooter Libby put the debate over the justification for the Iraq war back on the front pages. The president, through Vice President Dick Cheney, apparently authorized Libby to share with reporters key judgments of the National Intelligence Estimate on Iraq—evidence that disproved accusations from Joseph Wilson and others that Bush had manipulated or distorted the judgments of the intelligence community.

There was nothing unlawful or improper about what Libby claims the president did. News reports, however, darkly implied that Bush had been caught doing something disreputable; Democrats accused the president of duplicity, hypocrisy, and possible illegality; and the White House went into its characteristic defensive crouch: "We're not commenting on an ongoing legal proceeding," White House spokesman Scott McClellan said.

Nor, apparently, is the White House commenting on ongoing public proceedings—i.e., the new evidence gathered in Iraq of Saddam's terror connections. The Joint Forces Command in Norfolk has published a report called the "Iraqi Perspectives Project." In congressional testimony April 6, General Anthony Cucolo said the study drew upon "dozens of interviews with senior Iraqi military and regime leaders and thousands of official Iraqi documents."

> Beginning in 1994, the Fedayeen Saddam opened its own paramilitary training camps for volunteers, graduating more than 7,200 "good men racing full with courage and enthusiasm" in the first year. Beginning in 1998, these camps began hosting "Arab volunteers from Egypt, Palestine, Jordan, 'the Gulf,' and Syria." It is not clear from available evidence where all of these non-Iraqi volunteers who were "sacrificing for the cause" went to ply their newfound skills. Before the summer of 2002, most volunteers went home upon the completion of training. But these camps were humming with frenzied activity in the months immediately prior to the war. As late as January 2003, the volunteers participated in a special training event called the "Heroes Attack." This training event was designed in part to prepare regional Fedayeen Saddam commands to "obstruct the enemy from achieving his goal and to support keeping peace and stability in the province."

Rep. Dana Rohrabacher asked Lieutenant Colonel Kevin Woods, the chief author of the study, if Saddam had been "getting out of the terrorism business." Woods, a retired Apache helicopter pilot and military historian, replied, "In the context of the documents—and it is possible that other documents show different things—the activity was increasing from 1995 on." Woods and his coauthors elaborate in the May/June issue of *Foreign Affairs*:

> The Saddam Fedayeen also took part in the regime's domestic terrorism operations and planned for attacks throughout Europe and the Middle East. In a document dated May 1999, Saddam's older son, Uday, ordered preparations for "special operations, assassinations, and bombings, for the centers and traitor symbols in London, Iran and the self-ruled areas [Kurdistan]." Preparations for "Blessed July," a regime-directed wave of "martyrdom" operations against targets in the West, were well under way at the time of the coalition invasion.

The Bush administration has argued that Iraq was and is a central front in the war on terror. Here is evidence that they were right. And yet no one from the administration has noted these findings—to say nothing of commenting on other documents from Saddam's regime that are being made public. Apparently, the administration believes there is little to be gained from "re-litigating" the case for war. But unless Bush's critics stand down, it is foolish to try to stand aloof from this debate. We are engaged in a difficult war. It matters a great deal to the country how the Iraq war relates to the broader war on terror—just as it matters whether President Bush was honest in making the case for the war. The administration's timidity in taking on its critics, openly and publicly, is self-defeating. It's awfully hard to win a political struggle without fighting.

—*William Kristol*

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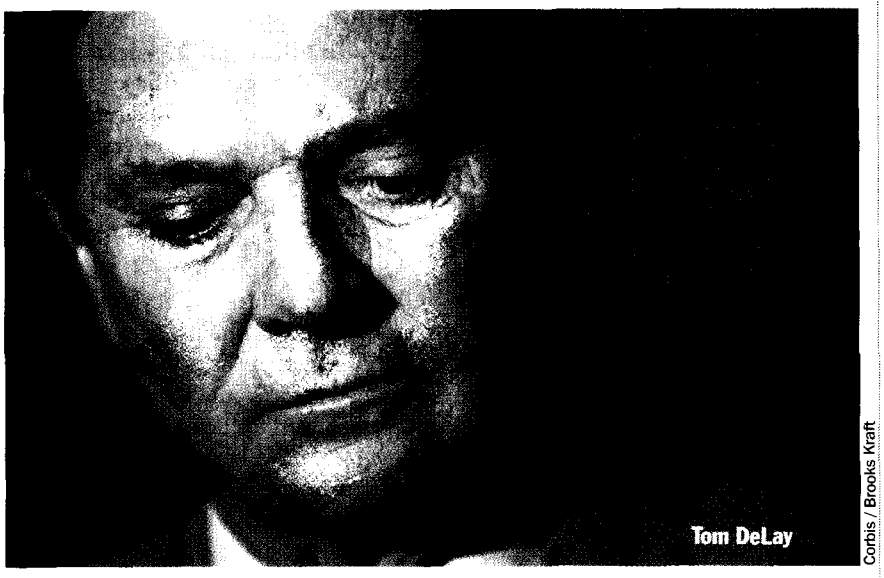
Without DeLay

House Republicans are in search of a vision.

BY FRED BARNES



Tom DeLay

Corbis / Brooks Kraft

As House majority leader, Tom DeLay had a crisp and clear style. He coupled an agenda with an unwillingness to compromise and an iron resolve to produce narrow victories based entirely on Republican votes. At the moment, his successor, John Boehner, is working on a mission statement—an official vision—for House Republicans. The comparison is not meant to belittle Boehner, but to point out where Republicans now find themselves.

Times have changed. DeLay is gone and Republicans, both at the White House and in Congress, are struggling just to figure out what their agenda is. So far, they're sure of only two issues. They want to pass an immigration bill and extend the tax cuts on dividends and capital gains.

DeLay believes the House worked best when it was "the echo chamber for the president." President Bush would propose and the House would dispose, just as the old saying has it. By doing so, the House became "the engine" for enacting Bush administration policy. The House would lead, and the Senate would follow. That was the story of Bush's first term.

But can the House again lead? Not for now. Boehner has been out of the Republican leadership for eight years. His skills are rusty. More important, he doesn't yet have the trust of House conservatives, the 100-plus who are hard core. He may gain the trust of the entire Republican majority, but it won't be easy with an unpopular president and a potentially disastrous election coming in November.

The media and even some inside the administration never recognized how talented—brilliant, even—a congressional leader DeLay was. He wasn't The Hammer, the nickname used mostly by the press. Believe it or not, DeLay was usually a gentle persuader, not an arm-twister. He could tie micro issues to the macro purposes of the party and the nation. Republican Paul Ryan of Wisconsin said DeLay could convince members to vote with him "just for Tom and the cause and the team."

Boehner has to pull the team together. On some substantive issues like immigration, Republicans are hopelessly divided. Boehner will have difficulty getting more than half of the 232 House Republicans to vote for a bill that includes any guest-worker program or process allowing illegal immigrants here in America to earn citizenship. Democrats will play a crucial role on that vote.

But Boehner *can* get Republicans working to help each other get reelected. A test of this was last week's vote to curb the unlimited spending of so-called 527 independent expenditure groups. They are a tool to evade campaign finance laws and have been used by rich liberals and Democrats to finance TV ads against Republicans at saturation level. This year they are being used to target vulnerable Republican moderates.

The problem is that many conservatives take the principled position that political spending should not be regulated. For them, it's a free speech issue. Boehner's lieutenants argued at a Republican caucus that the 527s were circumventing the McCain-Feingold restrictions that Republicans, like it or not, have been forced to accept. It shouldn't violate anyone's principles to make the 527s comply with a law intended to apply to them, they argued. Besides, sparing moderates massive TV attacks might be critical to their reelection.

The effort didn't quite work. Seventeen members of the conservative Republican Study Committee in the House voted to keep the 527s unregulated. The curb on the supposedly independent groups passed narrowly, but only because seven Democrats defied House Democratic leader Nancy Pelosi's orders against working with Republicans on any issue.

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Boehner's plan for 2006, after deciding on a vision, is to create a week-by-week schedule for taking up issues. He's giving the White House time to develop its own agenda with a new chief of staff, Josh Bolten, taking over this week. The aim, of course, is to reach agreement on which issues to pursue. But Boehner and other House leaders aren't prepared to defer automatically to the White House. Their majority in the House, one of them pointed out to me, preceded the arrival of the president. He didn't create it, and it may outlive his presidency.

Boehner has one distinct advantage over DeLay. He gets along with Democrats. He worked amicably and productively with them as chairman for five years of the House Committee on Education and the Workforce. This raises the question whether the basic Republican tactic should shift from relying almost solely on Republican votes, as DeLay did, to trying to woo Democrats. The conventional wisdom in Washington is that it's time for Republicans to compromise with Democrats.

This is a pipe dream. "The Democrats want problems, not solutions," says Republican representative Tom Cole of Oklahoma. He's referring to problems for Republicans. That's why 192 Democrats voted to retain the provision of the House-passed immigration bill that makes illegal aliens guilty of a felony. Now they blame Republicans for putting it in the bill in the first place, in hopes that it will infuriate Hispanic voters and cause them to vote Democratic this fall.

It's doubtful a significant number of Democrats would agree with Republicans in any event. Democrats are not sufficiently unified. "The only thing that unifies them is they don't like us," Cole says. "That's not enough." The result: Whatever the Boehner vision turns out to be, the House won't be able to do much. Pass immigration legislation, extend the tax cuts, and continue to support Bush on Iraq—that's probably the best case scenario. ♦

Post-Fox Mexico

Will a Hugo Chávez-style leftist become president south of the border? BY ANGEL JARAMILLO

Mexico City

ON JULY 2, the people of Mexico will elect a president, along with some 2,000 other public officials. Ideally, this exercise will strengthen the democratic process in a country where popular self-government has had a checkered past.

Democracy in Mexico goes back to the constitution of 1857, in which Benito Juárez and others sowed the seeds of self-rule. Unfortunately, the revolution of 1910 brought back to the fore a rival tradition, patrimonial and statist. Many decades would pass before, in the final decade of the twentieth century, the "perfect dictatorship," as the writer Mario Vargas Llosa called the Mexican political system, turned out to be weak. When Vicente Fox—a former Coca-Cola executive running under the banner of the center-right party, PAN—was elected president in 2000, there were grounds for optimism. Many commentators announced the dawning of an era of economic prosperity, political liberty, and social peace.

But once again, the path to democracy has proved uneven. After leading Mexico for more than five years, Fox, it is clear, is not the statesman his country needs. He missed a great opportunity. For one thing, he failed to grasp the meaning of September 11 and how it had changed Americans' thinking. Partly out of parochialism, he failed to see that new forms of international crime had outstripped existing provisions for civilized punishment. His delayed response after the attacks showed a lack of solidarity with the American people—not to mention the many Mexicans incinerated in the Twin Towers and the Pentagon.

More to the point, Fox made no serious effort to eliminate the remnants of Mexico's *ancien régime.* Admittedly, the members of the Mexican Congress bear some blame; they were more interested in petty self-interest than in the well-being of the nation. Nevertheless, President Fox failed as leader, and Mexico is in a state of governmental deadlock.

Indeed, there is a wide consensus that Mexico's democracy is at a crossroads. The next president must confront powerful drug cartels and organized crime, promote the rule of law, spur the creation of wealth and jobs, and manage globalization. The coming election is shaping up as a three-way contest.

The corrupt and oligarchic Revolutionary Institutional party (PRI) which ruled Mexico for 71 years, has chosen a candidate of the old guard. Robert Madrazo long flourished as an apparatchik and political leader within the PRI, and now offers empty rhetoric and an outdated program. Even some of his supporters have little confidence in him. The recent involvement of the PRI governor of the state of Puebla in an alleged plot to jail a journalist will likely further damage Madrazo. Ideologically a chameleon party, the PRI has no clear stance on the issues. Madrazo's best hope is to be seen as the least of three evils, an unlikely outcome in light of his party's history. At this point Madrazo is trailing the other two candidates slightly, and it would take a miracle to put him into the lead.

The real contenders are Felipe Calderón, of the center-right PAN, and Andrés Manuel López Obrador, the former mayor of Mexico City and the candidate of Mexico's third party,

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the left-wing Democratic Revolutionary party (PRD).

Calderón's chief handicap is that, at 43, he is relatively unknown in Mexican politics. He supports free trade, globalization, foreign investment, and sound monetary and fiscal policies, and makes a point of affirming his commitment to the rule of law and the protection of human rights. A Harvard graduate, he seems to understand the importance of Mexico's partnership with the United States. Having defeated Fox's heir apparent, former Secretary of Government Santiago Creel, in the primaries, Calderón is not seen as a Fox protégé.

López Obrador could hardly be more different. He came of age politically in the PRI in the state of Tabasco, where several prominent men of letters were his mentors. When his reformist wing of the party was sidelined by the technocrats led by Carlos Salinas de Gortari, he switched allegiances and helped to found the PRD. Immediately, he became a charismatic leader and helped his party rise. As mayor of Mexico City from 2000 to 2005, López Obrador carried out major public works, notably highway improvements, and laid the groundwork for his presidential bid. However, his tenure as mayor was marred by acts of corruption by close aides and by a lack of accountability. Currently he is ahead in most of the polls.

The trouble with López Obrador is his populist outlook, his parochialism, and his anachronistic ideas, such as complete state control of the electricity and oil sectors and suspicion of globalization. He is also known for his indifference to what happens overseas—he speaks no foreign language and has seldom traveled abroad. Having embraced a facile reaction against pro-market policies, he is seen in some quarters as the hope of the underprivileged. But his populist tilt is combined with a casual attitude toward the rule of law (he has said that his sense of fairness dictates disrespect for "unjust laws"). Moreover, he has not spelled out what he calls his "alternative project for the nation." Would he eliminate NAFTA? Does he seek some alternative to the liberal-democratic order? And what does he think about Fidel Castro's Cuba and Hugo Chávez's Venezuela?

These questions are timely. The Mexican elections are taking place in the context of the victories of left-wing parties all over Latin America. The left is in power in Venezuela, Chile, Argentina, Uruguay, Brazil, Paraguay, and Bolivia. Or perhaps it is more accurate to say two lefts are in power, for the Venezuela of Hugo Chávez is a far cry from the Chile of Michelle Bachelet. Of these two lefts, the former is authoritarian, antiliberal, and in the end antidemocratic, while the latter is committed in principle to a liberal-democratic order. Luiz Inacio Lula da Silva, in Brazil, seems to be taking the liberal-democratic path.

Chávez and Castro—sensing that for the first time in years a left-wing victory may be within reach in Mexico—are lending rhetorical support to López Obrador. Sure enough, López Obrador displays no commitment to an independent judiciary, the separation of powers, or accountability in government. Nor is the truth his forte: He has been lying to the Mexican people about his religious affiliation, claiming to be Catholic when he is actually Presbyterian.

As for relations with Washington, a President López Obrador would probably try to slight the United States by aligning himself with his Latin American counterparts. There is also some danger that he would contest the results of a close election, which this promises to be. López Obrador has resorted to this tactic in the past, and some of his aides have hinted that they do not trust the electoral authority, which they allege is controlled by the PRI and the PAN. If López Obrador decides to challenge the outcome in July, he will be defying the Federal Electoral Institute (IFE), a widely respected autonomous body created under President Salinas to organize elections.

In a nutshell: López Obrador looks like an old-fashioned authoritarian leftist who will lean towards demagoguery à la Chávez.

The United States should take notice of the potential damage to its interests if the Mexican elections produce an unfavorable outcome. Demagoguery from Mexico City would hardly aid a rational resolution of the immigration problem, for instance. Not only does Washington stand to lose a strategic ally, but Mexico's fragile democracy could also be put at risk and the security of the region jeopardized. It is in the interest of the United States, as well as Mexico, that Mexico continue to develop into a full-fledged democracy.

Happily, there is at least one small step the Bush administration could take to facilitate a smooth election: It could publicly express confidence in the IFE. The stakes in this election—given Mexico's geopolitical importance, its partnership with the United States, and Chávez and Castro's new regional ambitions—are too high to ignore. ♦

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Another U.N. "Reform"

The new Human Rights Council is no improvement. BY ANNE BAYEFSKY

THE BUSH ADMINISTRATION has decided not to run for a seat on the new U.N. Human Rights Council. The election, scheduled to take place in New York on May 9, is shaping up to be a nightmare for the United Nations, so there was good reason not to lend it credibility. But the real question is not whether the council will be inept, or whether it will use U.N. cover to demonize the United States and Israel while ignoring the human rights violations of the likes of China, Saudi Arabia, and Zimbabwe. The core issue is what the consequences of this fiasco should be for the American financial and political commitment to an unreformed U.N.

The council was created by the U.N. General Assembly on March 15 in a vote of 170 to 4 (United States, Israel, Marshall Islands, Palau), with 3 abstentions (Belarus, Iran, Venezuela). At the time, Under Secretary of State Nicholas Burns blunted the message of the U.S. "no" vote by telling reporters, "We'll look for ways to support [it]." The State Department, in last Thursday's announcement that the United States will not seek council membership this year, reiterated, "We will support the Council and we will continue to fund it."

But Senate Majority Leader Bill Frist has a different vision of constructive multilateralism. He submitted a resolution last week calling on the president not only to eschew a seat on the council, but also to "establish an effective human rights oversight body outside the United Nations system, so as to make it the primary means for examining, exposing, monitoring, and redressing human rights abuses throughout the world." Membership in this body would be limited to states with "a demonstrated commitment to the protection of human rights."

To understand the importance of the action Frist proposes, it is necessary to be clear about what it would leave behind. There has been a massive disinformation campaign concerning the Human Rights Council, operated by General Assembly president Jan Eliasson, Secretary General Kofi Annan, and Congressman Tom Lantos, with added muscle from Ted Turner's U.N. Foundation and financier George Soros.

Despite these efforts, the U.N. Secretariat has had to produce some unambiguous rules to govern the election process, and these clarify the situation. A U.N. document released April 4 explains that "membership of the Council shall be open to all Member States of the United Nations." No substantive criterion of eligibility reflecting respect for human rights is required for membership. The document also makes obvious who will own the U.N.'s human rights agenda: Membership "shall be based on equitable geographical distribution and seats shall be distributed among the regional groups as follows: African Group 13, Asian Group 13, Eastern European Group 6, Latin American and Caribbean Group 8, Western European and Others Group (WEOG) 7." (The United States is in the WEOG group.)

Which brings us to the candidates that have put themselves forward. First out of the gate for the African group is Algeria. And throwing their hats into the ring for the Asian group are China, Iran, Pakistan, and Saudi Arabia, among others. The Latins? Cuba to start.

Congressman Lantos has expressed "outrage" that the United States isn't anxious to join the party. By running, he says, the United States could "ensure" that states with abysmal human rights records would not be elected. This ignores the facts of life at the U.N., where the United States is only one of 191 members. Feverish vote-swapping among regional groups is now in full swing for the secret-ballot election to the council, and one can be sure the horse trading has nothing to do with protecting human rights.

In another twist, countries standing for election can choose to make a public pledge that they will eventually protect human rights. In the words of the secretary general, "states wishing to be elected to the new Council will put forward their pledges and commitments to protect and promote human rights. It will be up to their fellow member states to evaluate these promises." The U.N., however, for reasons that became clear as soon as the Algerians and Cubans made their pledges, has decided not to translate these pledges, but to make them available only in their original language, thus impeding evaluation of their worth. So far, only 15 of the 42 declared candidates have made such pledges. While the U.N. budget for 2006-2007 anticipates that the organization will translate 582,781 pages (one-fifth of the cost being borne by American taxpayers), the 15 pages of pledges won't be among them.

In short, nothing has changed. The newly "reformed" human rights body of the U.N. will once again include countries that have no interest in protecting human rights; the regions of the world with the fewest democracies will hold 55 percent of the seats. Standing in the background

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lamenting U.S. nonparticipation are some, like Amnesty International's Irene Khan, who believe that the "gulag of our times" is Guantánamo —not the Egyptian, Syrian, Iranian, and Sudanese torture chambers—and that the business of promoting human rights is best conducted with the delinquents on the inside, enjoying the privileges of the human rights club, instead of standing outside until they reform.

Senator Frist suggests a bold new direction for the international promotion of human rights outside the United Nations. The time is ripe for such an initiative. ♦

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Back to the Maoist Future

China's African ambitions.

BY PETER BROOKES

AMID FESTERING CONCERNS about China's burgeoning global power, Beijing has set its sights on expanding its influence in Africa. In a throwback to the Maoist revolutionary days of the 1960s and '70s, Beijing has once again identified the 53-nation African continent as an area of strategic interest. But this time it's not interested in exporting communism. Instead, it's wholly concerned with international trade.

Seeking new markets for its export-driven economy and unimpeded access to Africa's abundant natural resources, China lavishes African leaders with diplomatic pomp and circumstance as well as financial, commercial, and military assistance. Unfortunately, the policies of the People's Republic of China are aiding and abetting oppression, human rights abuses, poor governance, and economic stagnation, while shoring up some of Africa's most odious regimes.

Across the planet, China is aggressively seeking new friends and allies, and proving to be a less-demanding alternative to the more scrupulous United States and European nations. Africa's traditional European colonial and American partners now find their vision of a continent governed by free-market democracies and the rule of law challenged by Beijing's scramble for influence and resources.

Nothing is driving China into Africa more than its insatiable appetite for oil and gas. For the past decade, the Chinese economy has expanded annually at near double-digit rates, requiring an enormous influx of resources. China is already the world's second largest energy consumer, leading Beijing to Africa's door in an effort to reduce its reliance on volatile Middle Eastern sources. Today, Africa provides China with 30 percent of its energy imports.

Beijing is building ties with African energy suppliers through investment, aid, high-level visits, and a strict policy of "noninterference in internal affairs" that Africa's strongmen find comforting. China has invested billions in resource development and infrastructure—and written off billions more in debt—to help build cozy relationships with dozens of African countries. For instance, facing rebel attacks against their country's oil infrastructure and foreign oil workers, and disappointed in the U.S. response, Nigeria (the world's eighth largest oil exporter) turned to China for military aid. This generous assistance will not only protect Beijing's $3 billion oil investment in Nigeria, but will likely lead to additional lucrative oil concessions from Abuja. In Angola, another African energy giant, a $2 billion credit line for much-needed infrastructure projects secured Chinese access to coveted offshore oil fields, making China Luanda's second-largest oil customer after the United States.

Sudan presents the most pernicious example of China's new Africa policy, where Beijing combines its drive for exclusive access to natural

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resources with an aggressive political campaign to ingratiate itself with the continent's despots. While the United States, the European Union, Japan, and others sought to impose U.N. sanctions on the Sudanese regime over Khartoum's support for the genocide in Darfur, China strenuously opposed Security Council actions. Why? To prevent international economic sanctions from interfering with China's $3 billion investment in Sudan's oil and gas industry.

In fact, while 4,000 Chinese People's Liberation Army troops guarded oil pipelines, Sudanese government forces and government-aligned militias attacked rebels and hundreds of towns and villages around oil installations, forcing the dislocation of hundreds of thousands. Tragically, Khartoum has doubled its defense budget in recent years, spending 60 percent to 80 percent of its estimated $500 million in annual oil revenue—half of it from China—on weapons. Moreover, with Chinese assistance, the Sudanese government recently built three weapons factories, complicating international arms embargoes against Khartoum.

The comment of Chinese ambassador to the United States Zhou Wenzhong, while he was deputy foreign minister, reflects Beijing's Africa policy: "Business is business. We try to separate politics from business. Secondly, I think the internal situation in the Sudan is an internal affair, and we are not in a position to impose upon them."

Other African countries are regular purchasers of Chinese weapons and military equipment, too, providing political and economic access for China while allowing African authoritarians to quash political opposition and stifle democracy. In Zimbabwe, for example, President Robert Mugabe's repeated political and human rights abuses led the United States and the E.U. to impose punitive sanctions against the regime. Beijing's response was to sell Zimbabwe over $200 million worth of fighter aircraft and military vehicles. Beijing also provided equipment for jamming antigovernment media broadcasts and gave electronic surveillance equipment to Harare's security services to monitor political opponents.

Zimbabwe, the world's second largest exporter of platinum, also gets China's support internationally. Last summer, Britain and the United States backed yet another U.N. Security Council resolution condemning Mugabe's policies. Meanwhile, Mugabe flew to Beijing, seeking a handout for his beggared economy and Chinese support at the U.N.—which Beijing gave, killing the resolution. Not surprisingly, Beijing publicly praises Mugabe, who impoverished the once-prosperous Zimbabwe, as "a man of great achievements, devoted to world peace and a good friend of the Chinese people."

China strenuously opposed U.N. action against Sudan. Why? To prevent sanctions from interfering with China's $3 billion investment in Sudan's oil and gas industry.

China's ideological support for African despots like Mugabe lends these leaders a kind of pseudo-legitimacy both at home and abroad, blunting pressure for human rights, economic openness, and political freedom. In return, China receives support at the U.N. and in other forums for its causes, such as isolating Taiwan. As China's power grows, Beijing will become more willing to challenge the United States, the E.U. nations, and others to protect its interests in Africa—and elsewhere.

While China-Africa trade soared to $30 billion last year, bringing critical revenue to some of the world's poorest nations, Beijing also actively promotes its development model, based on a limited market economy controlled by a totalitarian government. Many authoritarian African regimes, desperate to invigorate their lackluster economies while maintaining a strong grip on political power, find China's modernization model preferable to the difficult free-market and democratic reforms advocated by the United States and the European Union.

While some Africans see the Chinese as kindred spirits who understand Africa's development plight and welcome the Chinese infrastructure projects, the PRC presence is also a source of consternation. Chinese firms underbid local companies, and PRC contractors often use cheap, imported Chinese labor, adding little to local employment or skill development. Moreover, cheap Chinese goods flood African markets, especially textiles, shuttering factories across the continent. And concessionary PRC loans have put International Monetary Fund and other bank projects on hold because of concerns about economic mismanagement and corruption.

China is rapidly expanding its influence in Africa to secure natural resources, expand Beijing's influence, and even isolate Taiwan through generous but self-serving diplomatic, financial, and military assistance. Chinese policies are endangering U.S. goals by supporting African dictatorships, hindering economic development, and exacerbating conflicts and human rights abuses in troubled countries such as Sudan and Zimbabwe.

What is needed is a comprehensive U.S. strategy that encourages democratic principles, human rights, free markets, and cooperation in regional security and energy development in concert with like-minded partners, looking beyond traditional European friends to democratic Asian and Latin American nations for support. Otherwise, China's broad energy, trade, political, diplomatic, and, yes, military interests threaten to undermine long-standing efforts to promote peace, prosperity, and democracy in Africa. ♦

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"Enemy of the People"

Moussaoui and his victims.

BY TOD LINDBERG

THE LEGAL CASE of Zacarias Moussaoui, the so-called "twentieth hijacker" and the only person hauled into U.S. criminal court for playing a direct role in the September 11 attacks, has been a morass from the beginning. Prosecutors have struggled to shove the square peg of international terrorism into the round hole of the criminal justice system. With an erratic defendant throwing away due legal protections and at times insisting on acting as his own counsel, extensive wrangling over the use of classified evidence and access to testimony from other al Qaeda detainees, scores of court filings, rulings, and appeals, and finally a judge's finding of egregious government misconduct during the trial, one must ask: Is this the best we can do?

Moussaoui's complicity in the 9/11 conspiracy is not in doubt. Whether you think he deserves the death penalty for his involvement probably comes down to the question of whether you favor the death penalty under any circumstances. Indeed, public opinion in the case of Moussaoui may well repeat the pattern that showed up in the case of Oklahoma City bomber Timothy McVeigh: In surveys, more people supported his execution in particular than supported the death penalty in general. You might call that evidence of people's inconsistency on the subject—or you might call it a judgment that some crimes, such as McVeigh's and Moussaoui's, are especially heinous.

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But suppose Moussaoui had agreed to cooperate with an aggressive legal defense. Suppose his lawyers had vigorously contested his links to the 9/11 plot. Suppose, rather than presenting himself as the proud al Qaeda member he is and pleading guilty to his involvement, Moussaoui had shut up and asserted his constitutional protection against self-incrimination. Would the government still have prevailed? Suppose, moreover, that Judge Leonie Brinkema had decided that the proper remedy for the prosecution team's misconduct—a Transportation Security Administration lawyer, coaching seven witnesses to keep their stories straight, showed them testimony they were barred from viewing—was to prohibit the government from seeking the death penalty or to declare a mistrial and start the whole thing over. What a mess.

The judge decided, in the end, to let the government go ahead with different, untainted air-security witnesses. But that's also a bit troubling: Was this the disinterested rule of law alone at work? Or is Moussaoui perhaps too monstrous to let slip on a "technicality," which, in truth, this was worse than?

By last week, however, after the jury's decision that Moussaoui should indeed face the death penalty, the proceedings finally achieved a certain clarity. For consideration by the jury in deciding whether Moussaoui should be executed, prosecutors brought forth the story of the victims of 9/11.

First out was former New York mayor Rudy Giuliani, who described the chaotic scene that day as he sought to understand and grapple

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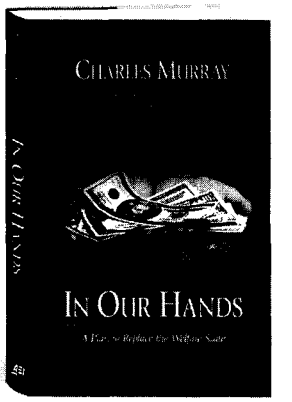

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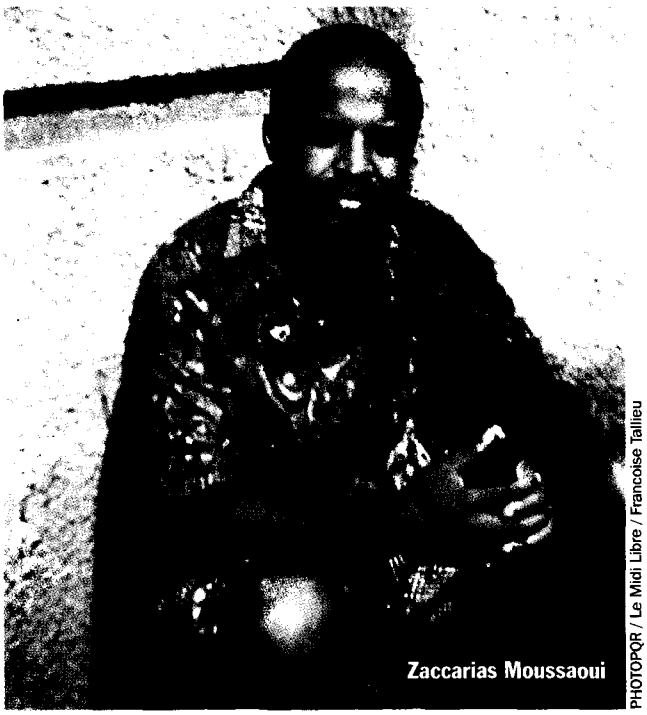
with the dimensions of the attack. Jurors also saw extensive video of people jumping to their death, sometimes in flames. They heard desperate 9-1-1 recordings of the doomed, trapped in thickening smoke above the impact point of the airplanes, as they realized they would die. Five relatives shared the pain of their losses, including one who described the later suicide of his sister, whose grief at the loss of her husband on one of the hijacked airliners grew unbearable. A former fireman described losing his best friend and mentor in the department; the friend was killed by a body falling from one of the towers.

Future testimony will entail playing the cockpit recording from Flight 93, which crashed in a field in Pennsylvania after passengers resolved to retake it from the hijackers. The recording has never been played publicly, though families of the victims have had an opportunity to hear it. At this writing, it is unclear whether the tape will be released outside the courtroom as well.

Needless to say, all of this is producing the effect prosecutors intended: Bailiffs brought in boxes of tissues for the jury. And what about the man at the center of the drama, Zacarias Moussaoui? News reports noted that his affect during the proceedings has generally been one of a seemingly studied boredom. As the video monitors showed one of the towers collapsing, however, Moussaoui was smiling broadly. During a break in the trial, he shouted, "Burn in the U.S.A." The government will likely finish up next week, at which point the defense will seek to portray Moussaoui as a victim in his own right—of mental illness and a troubled childhood.

The lead prosecutor, before the beginning of the penalty phase, promised jurors that what was about to come "will be painful and emotional to hear, but it will be necessary." Painful and emotional, it was. But was it really necessary?

Legally, the answer is yes. This is a criminal proceeding, and in order for the judge to impose the death penalty, the jury has to decide that aggravating factors outweigh mitigating factors. If jurors do not unanimously reach that conclusion, Moussaoui gets a life sentence. And since the defense has the right to tell us all about how tough a time young Zacarias had growing up, it would be irresponsible of prosecutors to do otherwise than emphasize the suffering of the dead as well as the living.


Zaccarias Moussaoui

PHOTOPQR / Le Midi Libre / Francoise Taillieu

But in a larger sense, the focus on the private suffering of the victims and their families invites us to lose sight of the main point. The conspiracy of which Moussaoui was a part was an offense against the United States. This is true whenever an accused criminal is brought to trial. He is prosecuted in the name of the people, not just in the name of the victim. That's because we all have a stake in the law, and when someone breaks it, we all have an interest in calling the person to account and imposing a suitable punishment.

The 9/11 conspiracy was in key respects different and worse, and not just because of the death toll and the sheer horror of the day. An "ordinary" criminal is just trying to get away with something—pursuing a private gain at the expense of the public. The last thing a thief wants is to have what he has stolen in turn stolen from him. He believes in and benefits from the law; he just doesn't want to see it applied to him. For acting on this attitude, society must impose a penalty.

In the 9/11 conspiracy, however, something else was at stake. A crime, but more than a crime, it was in principle aimed at the overturning of the social order and the law altogether. Osama bin Laden was reportedly surprised and pleased when the towers collapsed; this exceeded his expectations. He saw it as God's handiwork and, God willing, the first blow in the downfall of the United States.

The designation "enemy of the people" is one that states have sometimes deployed in order to justify monstrous acts against those so designated. We are right to be wary of the term and any hint of loose application. But we would be wrong to deny its applicability in the case of Zacarias Moussaoui.

Excessive focus on the plight of victims is dubious enough in ordinary criminal proceedings. It tends to encourage us to forget that we are seeking to vindicate the rights of *all* the people, not just the victims. It is even worse in the case of Moussaoui, where the "criminal" sees himself first and foremost as an enemy of the United States, whose downfall he seeks, and which he sought to further by participating in the 9/11 conspiracy. By pursuing him in criminal court, the U.S. government obscured the stakes in this case. ♦

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The Friends of Tom DeLay

What was the staff of the former majority leader up to anyway?

By Matthew Continetti

Every member of this House knows how important it is to have good staff. These are the people who run this institution from day to day. They are the people who do the grunt work, draft the bills, work long nights—all in service of the American people. And we, as Members of Congress, place our trust and careers in their capable hands every day.

—Tom DeLay

It was called the Safe House. Rep. Tom DeLay, Republican of Texas and majority whip of the House of Representatives, frequently visited the townhouse his former aides had bought in January 1999 as a place to make fundraising calls and confer with advisers, according to news accounts. Situated at 132 D Street, S.E., the house was only a few blocks from DeLay's suite in the Cannon Office Building.

A refuge for DeLay, the Safe House was also a hub of activity. DeLay's political action committee, Americans for a Republican Majority (ARMPAC), was headquartered there. The U.S. Family Network, a nonprofit with close ties to DeLay's former chief of staff, Ed Buckham, operated out of a small room in the back. And Buckham's consulting firm, the Alexander Strategy Group, which he ran with the help of his wife, Wendy, was there too. Technically, the U.S. Family Network owned the residence. In 2000, its value was assessed at more than $300,000.

Today, no doubt, the property is worth much more, though it no longer serves as a base for DeLay and his closest advisers. In April 2000, after *Roll Call* reported on the Safe House's location and tenants, ARMPAC and the Alexander Strategy Group vacated the property. Less than a year later, in January 2001, the U.S. Family Network shut down. The constituent parts of DeLay's political machine were dispersed around the capital, finding shelter on K Street, where lobbyists ply their trade, and in the Maryland and Virginia suburbs.

Now that machine will likely disappear for good. On Monday, April 3, in a 90-minute interview conducted in his home in Sugar Land, Texas, DeLay told *Time* magazine's Mike Allen that he is withdrawing from his reelection bid and plans to resign from Congress by summer. The race has "become a referendum on me," DeLay said.

Apparently that was a referendum he worried he would lose. On April 4, in a separate interview with a group of conservative journalists including The Weekly Standard's Fred Barnes, DeLay said the decision to withdraw came shortly after March 7, when he defeated Houston lawyer Tom Campbell in a Republican primary, 62 percent to 30 percent. "You get a sixth sense about this stuff," DeLay said, according to Byron York's account of the interview in *National Review Online*. "You know your district. . . . You don't need polls, but we ran a poll anyway. And the poll showed, basically, that I had a 50-50 chance of winning."

So, rather than risk losing a reliably Republican district to former Democratic congressman Nick Lampson, DeLay decided to change his legal residence to his Alexandria, Virginia, condominium, allowing Texas Republicans to choose another candidate. (Campbell has announced he will run to replace DeLay on the ballot; he faces numerous opponents, including DeLay's preferred replacement, Sugar Land mayor David Wallace.)

DeLay's sudden move, which shocked the political community, had a notable consequence: It pushed to the sidelines the March 31 news that DeLay's onetime deputy chief of staff, Tony C. Rudy, had pleaded guilty to conspiracy charges and pledged to cooperate with the ongoing investigation into congressional corruption stemming from the lobbying activities of Jack Abramoff. Over a period of several years, Abramoff

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defrauded six Indian tribes operating casinos of tens of millions of dollars, directing the tribes to donate to shell companies and nonprofits and hire close business associates, with whom he would split the graft.

Although Rudy's plea agreement refers to DeLay as "Representative #2," to date DeLay has not been accused of any improper behavior regarding Abramoff. DeLay says federal investigators have informed his lawyers that he is not a target in that investigation. He has pledged his cooperation, voluntarily delivering to the FBI task force some 1,000 emails. And he continues to deny any wrongdoing. But he is up to his armpits in scandal, and so are former members of his staff.

On October 3, 2005, a Texas grand jury empaneled by Travis County District Attorney Ronnie Earle indicted DeLay on charges of money laundering. The indictment, which came on the heels of a separate indictment on conspiracy charges, accuses DeLay and his co-conspirators of improperly funneling money into local elections in 2002. Republican victories in those elections enabled DeLay and his allies in the statehouse to push through a controversial redistricting plan that led to a historic GOP pickup of House seats in the 2004 elections. (Later this year, the Supreme Court is expected to rule on the legality of DeLay's plan.) DeLay, who awaits trial, says Earle, a prominent Democrat, is playing politics, and he denies all the charges.

On November 21, 2005, DeLay's former press secretary, Michael Scanlon, pleaded guilty to charges of conspiracy, and admitted that he and Abramoff had plotted to defraud their clients and influence members of Congress and officers of the executive branch. Released on a $5 million bond, Scanlon agreed to cooperate with investigators, pay $19.7 million in restitution to the tribes, and face a jail sentence of up to five years. He awaits sentencing.

On January 3, in Washington, Abramoff pleaded guilty to three counts of fraud, tax evasion, and conspiracy. The next day, he flew to Miami, where he pleaded guilty to two counts of conspiracy and wire fraud in connection with his 2000 purchase of the SunCruz casino company. On March 29, a federal judge in Miami sentenced Abramoff to 5 years and 10 months in prison on those charges; he awaits sentencing for the crimes he confessed to in Washington.

Oddly, DeLay seems to make major announcements regarding his future just days after significant developments in the Abramoff investigation, only then to deny any connection to that investigation. On January 7, when he announced he would no longer seek to retain his post as House majority leader, Washington was still reeling from Abramoff's plea bargain. And last week, when DeLay announced his retirement, analysts were still chewing over the implications of Rudy's deal with prosecutors.

This tendency suggests there may be further major announcements from DeLay, because the Abramoff probe is far from over. There are 13 FBI field offices across the country where some two dozen full-time (and as many part-time) officers spend hours unraveling the threads connecting Abramoff's power networks, according to reports in *Time* magazine. In addition to the guilty pleas of Scanlon, Abramoff, and Rudy, Abramoff's business partner in the SunCruz fiasco, Adam Kidan, has also pleaded guilty in Florida to wire fraud and conspiracy.

Last October, the former director of the White House's procurement office, David Safavian, was indicted on five counts of making false statements and obstruction of justice. The government alleges that Safavian masked his dealings with Abramoff and lied to investigators about his relationship with the lobbyist. Safavian denies the charges. His trial is set for May 22.

Meanwhile, Republican representative Bob Ney of Ohio appears in Abramoff's, Rudy's, and Scanlon's plea agreements, where he is referred to as "Representative #1" or "Legislator #1." Separately, the plea agreements allege that Ney accepted a stream of gifts from Abramoff and his associates, including free meals at the lobbyist's restaurant, tickets to sporting events, and expensive golf trips, in exchange for official action. Ney denies all the charges and has said that he is a victim, not an accomplice.

Last October, federal prosecutors informed Ney that an indictment on charges of bribery was being prepared against him in connection with statements he entered into the *Congressional Record* in the fall of 2000, according to Susan Schmidt and James Grimaldi of the *Washington Post*. Those statements, critical of South Florida gambling impresario Gus Boulis and supportive of Abramoff business partner Kidan, aided Abramoff and Kidan's attempt to purchase SunCruz, which Boulis owned.

The SunCruz deal was an unmitigated catastrophe. (See my "Money, Mobsters, Murder," November 28, 2005.) In February 2001, Boulis was shot and killed on his way home from a business meeting. Last September, three men, all tied to organized crime families in New York and Miami, were arrested in connection with the murder; they await trial. One of those men, Anthony "Big Tony" Moscatiello, a former adviser to mob boss John Gotti who also spent 15 years as an FBI informant, has told southern Florida media that Kidan was aware of the plot to kill Boulis. Kidan denies this, and has not been charged in connection with the homicide.

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This landscape of human wreckage, littered with the careers of former employees and associates, is central to Tom DeLay's legacy. And at its epicenter—and the place where the Abramoff investigation is almost certainly headed—is the townhouse at 132 D Street.

Tony Rudy is 39 years old. In 2003, the *Hill* newspaper called him a "lobbyist extraordinaire." He was born in Brooklyn and grew up in New Jersey, a talented athlete who loved to play hockey. In 1988, he graduated from the University of Massachusetts at Amherst with a degree in finance. Then he moved to Washington, where he found a job as legislative correspondent with California Republican congressman Dana Rohrabacher. Rudy spent four years toiling in Rohrabacher's office, eventually rising to press secretary, before leaving in 1992 to pursue a law degree from George Mason University in suburban Virginia.

In 1995, when he passed the Virginia bar, Rudy looked for a new job. He managed to land one of the most coveted staff positions in Washington: press secretary for the new majority whip, Tom DeLay. Rudy's job was to handle Texas media. But his star rose quickly. In 1996, DeLay named him general counsel, a position that Rudy held concurrently with his press duties.

To be on DeLay's staff was to be part of an influential family whose members were spread throughout government and the private sector. Over his 21 years in Washington, many have passed through DeLay's offices; the writer John Judis estimates the number at "about 300" on Capitol Hill and "about 75 more" who worked for the congressman's campaigns, his political action committees, and his charitable foundations. In addition, DeLay's lobbyist allies on K Street often served to magnify his power, functioning as a shadow staff that worked closely with his office to pass legislation and identify areas ripe for conservative reform.

One of those lobbyists was Jack Abramoff, who met DeLay in 1994. There are competing versions of how the two men were introduced. In one story, Rabbi Daniel Lapin, a friend of Abramoff's who runs Toward Tradition—a nonprofit "independent coalition of Jews and Christians seeking to advance America toward traditional, faith-based principles," according to its website—made the introductions. "It was just, 'Jack, meet Tom,'" someone told *Seattle Weekly* reporter Rick Anderson in May 2005. "Very informal at a D.C. dinner. Just people who see eye to eye."

In another story, first reported in *Time* magazine in January, DeLay and Abramoff met at a fundraiser when Ed Buckham, then DeLay's chief of staff, pulled the lobbyist toward the congressman and said that the two would be working together closely. However they met, DeLay and Abramoff enjoyed a rapport. "I have admired Tom DeLay and his family from the first meeting with him, and I still do to this day," Abramoff tells *Vanity Fair*'s David Margolick in that magazine's April issue. "We would sit and talk about the Bible. We would sit and talk about opera. We would sit and talk about golf. I mean, we talked about philosophy and politics. I didn't spend a lot of time lobbying Tom for things, because the things I worked on were usually consistent with the conservative philosophy, and I knew Tom would be supportive."

For his part, DeLay famously called Abramoff one of his "closest and dearest friends in Washington." This might have been the sort of exaggeration one would expect from a talented veteran politician. And yet even the most cursory look at Abramoff's career reveals that the lobbyist focused his efforts on gaining influence inside the majority whip's office, taking the congressman on trips, and coordinating his advocacy with DeLay's top lieutenants.

Central to those efforts, it would seem, was the U.S. Family Network. The nonprofit has a controversial past, but it was only last December that the *Washington Post* first reported on its myriad Abramoff connections. In 1996, a $15,000 donation established the network, according to tax records obtained by the *Post*. Buckham was listed as the founder. The Mississippi Choctaw, a tribal client of Abramoff's, donated the $15,000. On March 25, 1997, Buckham and Rudy visited the Choctaw reservation in Philadelphia, Mississippi, which today sports two casinos, a spa, and a golf course. The trip lasted until March 27 and cost $3,000.

As it turns out, the U.S. Family Network and a slew of other Abramoff fronts like the Capital Athletic Foundation, the American International Center, and Kay-Gold Inc., had highfalutin names but produced little or no actual work.

Instead, they served another function. For example, early in 1997, business holdings associated with the garment manufacturer Willie Tan, another Abramoff client, cut $50,000 in checks to the U.S. Family Network, according to the *Post*. Tan, the recipient of the largest labor fine in U.S. history, is a Chinese tycoon who owns clothing factories throughout the Commonwealth of the Northern Mariana Islands, a U.S. territory exempt from U.S. immigration, wage, and labor laws. Tan paid Abramoff millions of dollars to ensure that the exemption continued. And Abramoff was successful in doing just that.

According to the U.S. Family Network's ledgers,

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Buckham's wife Wendy was paid $10,000 of the Tan donation as part of her "commission." The financial relationship between the Buckhams and the U.S. Family Network—Wendy Buckham kept the books—was formalized on October 28, 1997, when Ed Buckham and the network agreed to a "letter of engagement."

According to its terms, the network would pay Buckham's lobbying firm, the Alexander Strategy Group, $12,000 a month starting in November 1997. Further, according to the letter—obtained by *National Journal*'s Peter Stone—"a percentage of high-dollar fundraising not to exceed 15 percent" would flow to Buckham's company. In 1998, for instance, the Alexander Strategy Group claimed $20,000 in "commissions" stemming from Tan donations to the network.

The nexus between the U.S. Family Network, the Alexander Strategy Group, Buckham, and Abramoff was established while Buckham still served on DeLay's staff. That changed in late 1997, when Buckham resigned as chief of staff to head the ARMPAC fundraising operation, which also operated out of 132 D Street. DeLay had founded the political action committee in the years prior to the Republican Revolution. Between 1998 and 2004, ARMPAC raised over $14 million, according to John Judis in the *New Republic*.

When Buckham left, DeLay promoted Rudy to deputy chief of staff, and hired the young Michael Scanlon, who previously had served as press secretary to Illinois Republican congressman Mike Flanagan. The staff changes became effective in early 1998, around the time Buckham founded the Alexander Strategy Group. DeLay helped to secure one of Buckham's first clients, Houston-based energy giant Enron, which entered into a $750,000 contract with the former chief of staff's small consulting shop.

As a tax-exempt nonprofit, the U.S. Family Network was expected to spend most of its time and money on nonpolitical activity. In one fundraising letter, Tom DeLay described the outfit as a powerful grassroots organization committed to social change. This seems to have been a grossly inaccurate description of the group. In retrospect, it was little more than a piggy bank. In 1997, the network paid Buckham's wife, Wendy, a salary of $53,000. Tax records indicate the network paid for a $27,000 GMC truck that was registered to Buckham's home in suburban Maryland. And in 1998, the network leased a skybox at the MCI Center (now Verizon Center) for $149,000.

It is difficult to determine where the U.S. Family Network ends and the Alexander Strategy Group begins. From 1998 to 2002, Christine DeLay was an employee of the Alexander Strategy Group, yet she seems to have been paid out of commissions the Buckhams took from the network. Those payments amounted to around $3,000 a month.

Last November, the DeLays' attorney, Richard Cullen, told the *Washington Post* that Christine DeLay had been paid $115,000 over three years to, as the *Post* put it, "determine the favorite charity of every member of Congress." To date, there is no evidence that DeLay compiled a list of 535 charities.

Yet the money kept rolling in. On June 25, 1998, a London-based law firm, James & Sarch Co., issued a $1 million check to the U.S. Family Network, the largest donation in the group's history and an extraordinary amount for a nonprofit with only one full-time staff member. Where the money came from is a mystery. The law firm that wrote the check no longer exists. David Sarch, one of the partners, is dead.

Last December, two sources told *Washington Post* reporter R. Jeffrey Smith that the donation had come from Russian energy interests, probably executives of NaftaSib, a Russian oil company and Abramoff client. In 1997, Buckham visited Moscow as a guest of NaftaSib; a few months after his return (he flew back on the Concorde), the DeLays, Abramoff, and others went to Russia, where they played golf, saw the sights, and attended a banquet hosted by NaftaSib. The congressman and his staff had numerous contacts with Marina Nevskaya and Alexander Koulakovsky, NaftaSib's top brass, who both had ties to Soviet intelligence.

According to Smith's sources, the original plan had been for the donation to be made in cash, but that fell through. Christopher Geeslin, a Maryland pastor who was associated with the U.S. Family Network for several years, told Smith that Buckham had told him the money was part of a campaign to influence DeLay's vote on a pending International Monetary Fund bailout. Geeslin told the *Post*, "Ed told me, 'This is the way things work in Washington.'"

As it happens, almost all of the money that the U.S. Family Network raised over its relatively short life came from Abramoff's clients. And these donations were often directly linked to trips Abramoff arranged for DeLay and his staff. On July 31, 1998, for example, DeLay, his wife Christine, and his chief of staff Susan Hirschman left for the Choctaw casinos and golf course. This trip lasted until August 3 and cost $6,935. Buckham reportedly planned and facilitated the trip. On August 3, the U.S. Family Network booked a $150,000 donation from the Choctaws.

Rudy's promotion to deputy chief of staff put him closer to Abramoff, who sought to ingratiate himself with congressional staff members, pulling them toward

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his clients' positions and his personal lucre. In January, one source told *Time* magazine that, "for all intents and purposes, Tony worked for Jack." This source also said that Abramoff bought a personal hand-held device for Rudy in order to remain in nearly constant communication. The lobbyist and the well-placed staffer were linked at the hip.

Such a connection had its benefits. On October 26, 1998, Abramoff sent an email to Rudy requesting his help. In Guam, there was an upcoming gubernatorial election, and the Republican candidate, Joe Ada, was in danger of losing to the Democratic incumbent. "We want to know if there is any way to get Tom to call for an investigation of the misuse of federal funds on Guam by this governor," Abramoff wrote in the email, which was first obtained by the *Wall Street Journal*. "A press release and letter requesting an Inspector General (I guess from Interior?) to investigate these matters," Abramoff went on, "should have a major impact on the election next week."

Sure enough, later that day, DeLay's office issued a public rebuke of the Democratic governor, Carl Gutierrez, and sent a letter to the Department of the Interior calling for an inquiry. "The allegations and materials I reviewed," says the text of the letter, signed by DeLay, "point to serious corruption."

In the end, however, like many of Abramoff's lobbying efforts, the Guam campaign went nowhere. The Interior Department took no action; Ada lost; and while Gutierrez did eventually stand trial on corruption charges, he was acquitted.

On Guam, Rudy and Abramoff also worked with Scanlon, who was then 27 years old. Later, Rudy and Scanlon reportedly were to clash, but in 1998 they shared a common goal: impeaching President Clinton. That December, the two DeLay staffers worked furiously to whip the impeachment vote.

One day during the legislative battle, Scanlon wrote an email to his boss that first surfaced in reporter Peter Baker's *The Breach*. "God Bless you Tony Rudy," Scanlon wrote. "Are we the only ones with political instincts—This whole thing about not kicking someone when they are down is BS—Not only do you kick him—you kick him until he passes out—then beat him over the head with the baseball bat—then roll him up in an old rug—and throw him off the cliff into the pound[ing] surf below!"

Scanlon's literary style would later haunt him, when the Senate Indian Affairs Committee released thousands of emails he had sent to Abramoff in which he pilloried his tribal clients and referred to social conservatives as "wackos." Rudy's style was different. He was less abrasive. He earned people's trust.

In April 1999, when he was still DeLay's deputy chief of staff, Rudy and his wife traveled to Hilton Head, South Carolina, on an all-expenses-paid trip financed by lobbyists, according to Rudy's plea agreement. The agreement fails to specify who exactly paid for the trip, listing either "Abramoff, clients of Abramoff and clients of Lobbyist B"—who is Buckham—or "Abramoff's business interests." This trip was the first of many and, according to the plea agreement, the beginning of Abramoff's financial relationship with Rudy.

In August 1999, Rudy and his wife formed a company, Liberty Consulting. Lisa Rudy was the sole employee. Liberty Consulting seems to have been another version of the Alexander Strategy Group; most of its clients, like the group's, were clients of Abramoff. Rudy admits in his plea that he knew Buckham "shared some clients with Abramoff," and that he arranged for payments from Abramoff and Buckham to be made to Liberty Consulting. In all, the firm took in $86,000 while Rudy remained on DeLay's staff. It is unclear what services, if any, the firm performed for that money.

In December 1999, Buckham and Scanlon—who was still DeLay's press secretary—went to the Marianas. They were there to help Abramoff's favored candidate win election as speaker of the commonwealth's House of Representatives. That candidate, Ben Fitial, had previously worked for Willie Tan, the factory tycoon who employed Abramoff. Rudy was aware of, and helped to coordinate, the visit. Buckham and Scanlon met with members of the Marianas legislature and determined that two of its members would side with Fitial if DeLay supported a variety of projects in their districts. After Buckham and Scanlon returned to the United States, the representatives they had met with—Alejo Mendiola and Norman Palacios—announced their support for Fitial, who was elected speaker in January 2000.

That month, Rudy arranged for another DeLay staffer to visit the Marianas alongside Scanlon, according to Rudy's plea agreement. The aide reportedly was Brett Loper. His job was to look around the commonwealth for opportunities for pork. He found some, and in May 2000 Congress passed an appropriations bill that made the construction of an airport on the Marianas island of Rota—home to Rep. Mendiola—a spending priority. In October 2000, in a separate appropriations bill, Congress directed $150,000 to a breakwater project on the Marianas island of Tinian, home to Rep. Palacios. In his plea agreement, Rudy admits that he "worked with others to secure certain appropriations projects for the [Marianas] which he knew would help Abramoff's lobbying business and that

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had been sought by Abramoff and Lobbyist B," aka Buckham.

In his plea agreement, Rudy also admits much else. In the spring of 2000, he arranged for a letter from DeLay opposing a postal-rate increase that would have cut into one of Abramoff's client's profits. Last week, DeLay told the group of conservative journalists that he had nothing to do with the letter, according to *National Review*'s Byron York. "Frankly, what it sounds like from what I read in the media was that they were trading off of knowing that I would already be in those positions," DeLay said. "I have always opposed postal rate increases. So you know this one's coming up, DeLay's going to be against it, so I'm going to make some money off of it, telling so-and-so and so-and-so that I can get DeLay to be against it."

In March 2000, as Abramoff worked furiously with DeLay's office to scuttle the Internet Gambling Prohibition Act—which would have put one of his clients, eLottery, out of business—Michael Scanlon left DeLay's office to join Abramoff's team at Preston Gates Ellis LLP. DeLay and his senior staff, it seems, were crucial to Scanlon's hiring. "Scanlon—we didn't fire him, but we found him another job," DeLay told the conservative journalists last week.

The eLottery campaign was a triumph of Abramoff's lobbying style, coupling high-powered connections on Capitol Hill with the grassroots contacts he had fostered in over two decades of conservative activism. Throughout the fight, Rudy provided Abramoff with advice and an insider's perspective on legislative maneuvers. Meanwhile, Abramoff instructed eLottery to pay millions of dollars to social conservative groups, telling those groups that the Internet gambling ban would actually increase gambling overall. For the most part, the social conservatives were unaware of who was funding their efforts, as Abramoff passed eLottery's money through a variety of nonprofit conduits.

In May 2000, Abramoff arranged for DeLay and Rudy to accompany him on his annual trip to St. Andrew's golf course in Scotland. A nonprofit, the National Center for Public Policy Research, on whose board Abramoff sat, nominally paid for the trip. But the funds the National Center used originated from eLottery, which cut a $25,000 check to the group on May 25, the day Abramoff's junket departed, according to Susan Schmidt and James Grimaldi's reporting in the *Washington Post*.

By the summer of 2000, DeLay had still not said how he would vote on the gambling prohibition bill. But Rudy's sympathies were well known to the Preston Gates lobbyists: He wanted to help Abramoff defeat the measure. On June 8, less than a week after returning from Scotland, Rudy sent a wireless message to Abramoff that read: "911 gaming," according to Schmidt and Grimaldi. Later, Rudy suggested that Abramoff arrange for a meeting with Speaker of the House Dennis Hastert of Illinois and Majority Leader Dick Armey of Texas. Abramoff forwarded Rudy's suggestion to his staff. "Message from Tony Rudy," Abramoff wrote. "Don't share it please. However we should take his advice."

That month, Abramoff began to pay Rudy's Liberty Consulting a monthly stipend of $5,000. In June, he paid $10,000. Some of this money was passed through yet another nonprofit. "Rudy was aware that Abramoff arranged for at least one of his clients to make donations to the nonprofit and that this money was used to make payments to [Rudy's] wife," according to the plea agreement. Rudy had provided favors to that client—unnamed in the plea agreement, though in all probability eLottery. The nonprofit was Rabbi Daniel Lapin's Toward Tradition, according to Peter Stone in *National Journal*.

Slowly, Rudy was morphing into a sort of *consigliere* to Abramoff, who listed the DeLay aide as a reference in his fraudulent loan application for the purchase of SunCruz casinos. And Rudy lent more than his name. On June 15, 2000, he accompanied Abramoff to the U.S. Open in Pebble Beach, California, alongside Adam Kidan and employees of Foothill Capital, Abramoff and Kidan's lenders. A few weeks after that trip, Rudy arranged for DeLay's office to send SunCruz's owner, Boulis, a U.S. flag that had been flown above the Capitol.

As Abramoff went after SunCruz, the battle over Internet gambling continued on Capitol Hill. On July 11, Rudy wrote to Abramoff: "I think we should get Weyrich"—conservative activist Paul Weyrich—"to get like 10 groups to sign a letter to Denny and Armey on gaming bill." On July 13, the Reverend Lou Sheldon, a prominent social conservative and beneficiary of Abramoff's largesse, met with DeLay in the majority whip's offices. Sheldon told DeLay that he opposed the Internet Gambling Prohibition Act. Shortly after meeting with Sheldon, DeLay decided that he would also oppose the bill. Four days later, on July 17, 2000, the gambling ban was defeated, 25 members short of the two-thirds majority required for passage under House suspension rules.

Later that summer, one day in August 2000, Rudy hosted a bachelor party in Abramoff's suite at the Washington Redskins' FedEx Field.

By the end of 2000, Rudy was angling for a job outside government. Abramoff was also looking for a change. He had decided to switch law firms and move to the Washington offices of Miami-based Greenberg Traurig. Abramoff asked Rudy if he would like to join him at the

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new firm. Rudy accepted.

DeLay was devastated by the news. He had high regard for Rudy, and had come to trust him as a friend and ally. On December 15, 2000, the congressman entered remarks on Rudy's departure into the *Congressional Record*. "Mr. Speaker," DeLay said, "I rise today to pay tribute to a friend and colleague who, after eight years of service to the House of Representatives, is moving on."

After emphasizing the important role staff members play in American politics, DeLay continued:

> I am very lucky. I have always been blessed with great staff. But every once in a while a truly special person comes along and inspires and energizes an office. I was lucky enough to have one of the best, one of the most committed, one of the brightest staffers on Capitol Hill working for me for the past five and a half years. His name is Tony Rudy.

Rudy, DeLay went on, had many qualities:

> One of the things that I have always admired about Tony is his real commitment to the conservative agenda. He is not in Washington, D.C., for power or personal gain. He is here because he believes in what he is doing and because of his desire to make America a better place. And his commitment was on display every day as he moved through my office like a whirlwind, pressing staffers to do more, to work harder. He is personally responsible for the passage of much good legislation, but more importantly he was on the lookout for bad legislation.

"Tony's departure is a personal loss for me," DeLay concluded. "But I know that it is the right thing for him to do. I wish him the best in his new career and I wish him and his family all the joy and happiness in the world. After all of Tony's hard work for me and the American people, they truly deserve it."

There was another encomium to Rudy. On December 20, 2000, the *Saipan Tribune*, owned by Willie Tan, reprinted excerpts from DeLay's remarks, under the headline "A Tribute to Tony Rudy, a Good Friend and a True Believer." "Tony has been the most helpful staffer for the CNMI in its history," the *Tribune*'s publisher, John S. DelRosario Jr., wrote. "He is going to join Mr. Jack Abramoff at the new firm." Rudy, DelRosario went on, was a "superhero."

A few weeks later, Rudy showed up for work. He was now—officially—part of Team Abramoff.

In one sense, however, Rudy never actually left DeLay's side. Throughout that first year of his job, though forbidden by federal lobbying regulations to have official contact with his former colleagues, he routinely met with, and spoke to, members of DeLay's staff on behalf of his new clients, sometimes working out of the congressman's offices. "Rudy was not shy in selling his access to DeLay," a former aide told *National Journal*'s Peter Stone in January. And this perpetual entanglement seems to have proven fruitful.

On January 3, 2001, DeLay entered the text of an editorial from the December 27, 2000, issue of *Indian Country Today* into the *Congressional Record*. The editorial praised the Mississippi Choctaw, now a client of Rudy's and Abramoff's at Greenberg Traurig. "Self-reliance and not government dependency is the secret to prosperity," DeLay said. "But there is no need to tell [Choctaw] Chief Martin that fact. He has lived his life promoting the economic vitality of his people and they have reaped the benefits of his progressive thinking. I salute Chief Martin for all he has done to further the cause of freedom—for his people and for our nation."

That month, Rudy used his connections to secure DeLay's support for "legislation providing for reparations payments to certain U.S. citizens and from assets in the United States of foreign companies and governments," according to Rudy's plea agreement. Also beginning that month, and lasting through October 2002, Rudy arranged for clients to pay "a nonprofit public policy organization" a total of $55,000—$17,000 of which was then kicked back to Liberty Consulting.

Rudy was beginning to think like his new boss. On September 21, 2001, he sent Abramoff an email, which has since been released by the Senate Committee on Indian Affairs. "There are a few Senate staffers I would like to help reward," he wrote. "Would the Choctaws or Coushatta donate like 10K to pay for a trip?" (The Choctaw and Coushatta were both Indian casino clients.)

"A trip where?" Abramoff replied.

Rudy answered that members of New Hampshire senator Bob Smith's staff had "expressed an interest in" a "hunting and fishing resort 3 hours south of Texas."

"I don't see how we can sell them on that," Abramoff shot back, referring to the tribes.

But Rudy could see how. A "thank you trip," he wrote, "for the approps we got."

"Smith's people didn't get us the approps for Choctaw," Abramoff responded. "But good try!:)"

Rudy was unpersuaded. He wrote back: "But how would Coushatta know? :)"

Rudy never got his "thank you." But there were other rewards. In February 2002, Abramoff arranged for the Mississippi Choctaw to pay a total of $25,000 to Liberty Consulting. The payments were made in monthly installments from February to July. And sometime around April 2002, Rudy and Abramoff instructed a "distilled beverages company" that it ought to contribute $20,000 to "a non-

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profit public policy group in Washington, D.C." They failed to tell the company that the "public policy group" then funneled $8,000 of the contribution to Rudy's Liberty Consulting.

Money was everywhere. In 2001, after the SunCruz debacle, Abramoff faced terrible debt. Boulis had been murdered, Kidan was out of control, and the casino cruise line faced bankruptcy. As rich as he was, Abramoff had nowhere near the amount of cash it would take to pay back the $60 million loan he had received to purchase SunCruz. The first cracks in his armor were beginning to appear.

But he had a way out. He contacted Scanlon, who had left his employ to start a public relations firm, Capitol Campaign Strategies. Together, the two concocted a scheme by which Abramoff would direct his Indian casino clients to hire Scanlon's firm for "grassroots" consulting. Scanlon would then charge the clients incredibly high fees in return for little work. Since public relations firms, unlike lobbying firms, do not have to disclose their clients or revenues, no one would be able to see Abramoff and Scanlon's profits, which they split under an arrangement they called "Gimme Five." Together, over several years, the two convinced six tribes to pay them a total of over $60 million.

The high point—or low point—of the Gimme Five scheme occurred in 2002, when Abramoff convinced the Tigua tribe of El Paso, Texas, to hire Scanlon to reopen their casino, which had been closed at the order of the Texas attorney general, now-U.S. senator, John Cornyn. The irony was that, unbeknownst to the Tigua, Abramoff and Scanlon had colluded to shut down the casino in behalf of a competing tribe just months before.

Rudy was part of the effort to reopen the Tigua casino, for which the tribe was paying Scanlon's company $4.2 million. It was Rudy who worked with Rep. Bob Ney's office to insert a provision into an election reform bill that would allow the Tigua to restart their business. Rudy had worked with Ney before. In March 2001, he secured Ney's assistance in supporting legislation that would have allowed the Marianas to continue labeling their clothing "Made in the USA" without being subjected to U.S. wage and labor regulations, according to Rudy's plea agreement.

In the summer of 2002, Abramoff wanted Ney to accompany him on his annual golf sojourn to Scotland. Rudy's job was to arrange funding for the trip. In courting donors, Rudy would often tout his connections to Tom DeLay. On June 6, 2002, Rudy asked a client to contribute $25,000 to the Capital Athletic Foundation, Abramoff's nonprofit "charity" (less than 1 percent of its revenue went to legitimate charitable causes). Rudy told his client that the foundation was DeLay's favorite charity.

Earlier that same day, Abramoff wrote Rudy: "Did you get the message from the guys that Tom [DeLay] wants us to raise some bucks for the Capital Athletic Foundation?" He went on:

> I have six clients in for $25K. I recommend we hit everyone who cares about Tom's requests. I have another few to hit still. It's a tax deductible foundation doing some issues education (they do NO lobbying at all), so it's easier (though it did not matter to the tribes). I think that, if we can do $200K, that would be good.

Rudy said okay.

"Great!" Abramoff wrote. "Can you email Petras on the Sag Chip request (it'll look better coming from you as a former DeLay COS). We'z gonna make a bundle here."

Later, Rudy himself would write the email to Chris Petras, the Saginaw Chippewa representative, requesting a donation of $25,000 to the Capital Athletic Foundation. The request came, Rudy wrote, from "a public official." The implication was that the official was DeLay.

On June 20, Rudy wrote an email to another Greenberg Traurig lobbyist, Todd Boulanger, asking him to remind Petras of the request.

But Boulanger didn't know what Rudy was talking about. "What is this?" he replied.

"Jack wants this," Rudy wrote.

"What is it? I never heard of it," Boulanger said.

"It is something our friends are raising money for." Then Rudy forwarded the exchange to Abramoff.

"Sh-t!" Abramoff replied. "I did not want you to bring Todd into this!!! Don't you see that we have a problem now?"

The problem was that an outsider had learned about Abramoff's side projects. Yet there seems to have been no consequence to the leak. In August 2002, the golf trip went ahead on schedule. Attempts to reopen the Tiguas' casino failed. Abramoff and Scanlon kept the $4 million.

The lobbyists' income had reached absurd levels. In March of 2002, Scanlon, engaged to another former DeLay staffer, spent $4.7 million (in cash) on a mansion in Rehoboth Beach, Delaware. When he traveled, Scanlon flew in a private jet. Rent for his apartment at the Ritz-Carlton in Washington's West End was $17,000 a month. He owned five properties, including two other homes in Washington worth $1.2 million, the $1.6 million beach house that served as the "headquarters" of the American International Center—a "think tank" that existed only on paper—and a beachfront property in St. Barts in the Caribbean. For his part, Abramoff expended vast amounts of energy trying to keep all the parts of his empire from flying apart and crashing to the ground.

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In July 2002, Rudy left Greenberg Traurig to join Buckham at the Alexander Strategy Group. There, Rudy and Buckham continued to share clients with Abramoff. But there was an important difference. Theirs was a small operation that wanted to stay out of the news.

Buckham had been very much in the news in 1999, when the U.S. Family Network came under attack after it took a $500,000 check from the National Republican Congressional Committee (NRCC). The NRCC had also hired Buckham as a consultant. Explaining the decision, NRCC deputy chairman Dan Mattoon told *Roll Call*, "Ed is a well-known person on Capitol Hill. Ed is clearly very close to Tom DeLay, as I am close to Tom DeLay. But Ed has a lot of other issues in dealing with the religious community and (the) pro-family community that go beyond Tom DeLay."

Tax records show that $300,000 of the $500,000 check from the NRCC was rerouted to another group, Americans for Economic Growth, which used the funds to pay for radio ads in battleground House districts during the 2000 election season. But Democratic objections to the donation led to heightened media scrutiny of the U.S. Family Network and Buckham's fundraising/lobbying operation, which, in turn, led to some unexpected results.

On April 17, 2000, the president of the U.S. Family Network, Robert Mills, resigned. Mills was a long-time DeLay ally, having run the congressman's 1996 reelection campaign. Prior to his work for DeLay, Mills held a job at the Council for Government Reform. *Roll Call* had uncovered documents showing that Mills had admitted embezzling $35,000 from the council, however, which resulted in his leaving the house at 132 D Street. But life goes on. Shortly after Mills's departure, Buckham chose his replacement: Brooke Gambrell, a 27-year-old former beauty queen.

On May 3, 2000, the House Democratic Congressional Campaign Committee filed an unusual civil suit against DeLay, accusing him of money laundering. The suit was filed under the federal government's RICO Act, used to combat racketeering and extortion. Exhibit A was the U.S. Family Network. DeLay's spokeswoman, Emily Miller, denied all accusations of wrongdoing. But the legal and public relations fight had a profound effect on the U.S. Family Network.

One day in January 2001, the network held its final board meeting. There, at the request of an unnamed "gentleman who donated the largest amount of money to USFN," the board decided to pay $150,000 to something called the Dorothy Joan Morris Foundation, according to minutes of the meeting obtained by the *Washington Post*'s R. Jeffrey Smith. The money, according to U.S. Family Network documents, was for "program services related to prayer."

Curious about what the Dorothy Joan Morris Foundation was, *Post* reporter Smith tracked down its incorporation papers, which said the foundation was located in a Frederick, Maryland, strip mall. A company called Foundation Ministries Inc. owned the foundation, according to the incorporation papers. Foundation Ministries is run out of the Buckhams' home in Frederick.

Smith further discovered that Dorothy Joan Morris is the 79-year-old mother of Roger Albanese, who was formerly Ed Buckham's assistant. Reached by telephone, Morris told Smith that she and her husband live in a trailer home in Las Vegas, Nevada. She never gave permission for her name to be used, Morris went on. She never knew about the $150,000 payment. She never saw any money. "What right does he have to put that in my name?" Morris said, referring to Buckham. "It's fishy."

In April 2001, a few months after the U.S. Family Network closed shop, and a few weeks before going to trial, both plaintiff and defendants agreed to withdraw the RICO suit against DeLay. As part of the deal, the NRCC agreed to pay a $280,000 fine to the FEC. The crisis abated. But others would spring up in its place.

Little is known about what went on behind the doors of the Alexander Strategy Group when Tony Rudy arrived to work there in 2002. Even less is known about the firm's operations between the day of Rudy's arrival and January 9, 2006, when the firm closed shop. Buckham will not speak to reporters, nor will Rudy, whose plea agreement speaks for itself.

It is known, however, that, of the $3.02 million in revenue that the U.S. Family Network collected, the Buckhams received $1,022,729. And it is likely that we will learn more about what DeLay's staff was up to in the coming months. In February, the Justice Department issued a subpoena for the U.S. Family Network's records. Buckham, mentioned as "Lobbyist B" in Rudy's plea deal, is a probable target of the investigation, and is no doubt under considerable pressure to strike a deal of his own.

But questions remain. To date, DeLay says he has been shocked and saddened at the allegations made against his former staff, but that he had no knowledge of any wrongdoing. Yet all of these activities occurred while he sat at the helm of one of the most powerful congressional offices in American history. Could DeLay not see what was happening around him? Was he unable to detect that he was a pawn in a criminal enterprise that netted its conspirators millions of dollars? How could he possibly have been that bad a manager?

Last week, at one point in his exclusive interview, Mike Allen asked DeLay whether he had ever done anything immoral.

DeLay laughed.

"We're all sinners," he said. ♦

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Bowing to Precedent

A decent respect for the Constitution should cause the Supreme Court to reconsider some past decisions

By Robert F. Nagel

At the outset of Samuel Alito's confirmation hearings, Judiciary Committee Chairman Arlen Specter asked a series of questions about the rather arcane subject of *stare decisis*, which is the judicial practice of following prior decisions. Eventually the questions took an odd turn, with Specter asking Alito whether he agreed that the right to abortion had special immunity from reconsideration, that is, whether it is "super-precedent." Alito parried this by declining to "get into categorizing precedents as super-precedents or super-duper precedents." That sort of terminology, Alito said, reminded him "of the size of the laundry detergent in the supermarket." This exchange, which must have puzzled most Americans, was highly significant. Indeed, it touches on ideas that are basic to understanding why the Court has become such a dangerous institution and whether the appointments of Justice Alito and Chief Justice Roberts are likely to change things.

Although the practice of sticking with precedent is often associated in popular understanding with stodgy legalism, it was a shrewd subject for Specter to choose. Alito, like any good lawyer, makes his living by working from the logic of prior cases. Moreover, a reluctance to disrespect or to unsettle prior understandings is especially natural for someone with conservative instincts. Thus, while it is doubtful that Alito thinks the Court's famous 1973 abortion decision, *Roe* v. *Wade*, was solidly based in the Constitution, it is certainly possible that he might be too devoted to precedent to overrule it. Other Republican appointees—including Justices O'Connor, Kennedy, and Souter—refused in *Planned Parenthood* v. *Casey* to overrule *Roe* largely because they think it is entitled to a special degree of respect as precedent. If the original abortion decision is super-precedent and the Court in *Casey* emphatically affirmed that extraordinary status, then *Casey* must be super-duper precedent.

That Alito should have a bit of fun with this logic is encouraging, but it does not tell us how willing he would be to reconsider constitutional precedents. This is crucial, because 35 years of Republican domination of the Court has not resulted in the overruling of a single revolutionary Warren Court decision—not *Miranda* v. *Arizona*, which imposed a new interrogation procedure on police departments across the country, not *Griswold* v. *Connecticut*, which began the constitutionalization of sexual freedom, not *New York Times* v. *Sullivan*, which turned the regulation of defamatory speech over to the courts, and not *Brandenburg* v. *Ohio*, which even in this age of terrorism continues to protect most advocacy of violence.

The Roberts Court now faces not only Warren Court precedents but also, even putting the abortion issue aside, dozens of far-reaching precedents established during the Burger and Rehnquist eras. Those include cases prohibiting virtually all gender distinctions in the law, protecting homosexual sodomy, severely limiting public religious observances, and preventing states from regulating profanity.

Respect for precedent means not only that the justices should follow the specific outcomes of prior cases but also that they must follow their logic. The logic of legions of cases demands that judges second-guess legislative and executive decisions on the most sensitive moral and political issues and that judges decide for themselves on the appropriate means for achieving preferred policies. The simple fact is that constitutional law as set out in the cases now *requires* judges to legislate from the bench. Nominees to the Court can repeat endlessly that judges should interpret, not make, law. But unless they are willing, once on the Court, to rethink the

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logic of prior cases, they will have to make law.

This displacement of political decision-making has had deeply harmful consequences for our society. It has led Americans to lose political self-confidence and to depend pathetically on the judiciary to resolve the most pressing public issues. At the same time, since judicial resolutions tend to be couched in the language of high principle, the Court's role has reduced the opportunity for political compromise and thus has inflamed passions and distrust.

So Specter's questions about *stare decisis* were not tangential or technical. They go to the heart of the question of whether even sustained, apparently effective efforts to rein in the Supreme Court through the appointment process can be more than marginally effective. It is important, therefore, to consider carefully the justifications for the ideas of precedent and (God help us) super-precedent.

There are some cases that as a practical matter are not subject to reconsideration. As Specter has pointed out in various confirmation hearings through the years, *Marbury* v. *Madison*, the iconic 1803 case that established the power of courts not to enforce statutes that they consider to be unconstitutional, is not going to be overruled, nor is the Supreme Court going to consider overruling it. The same is true for the famous school desegregation decision, *Brown* v. *Board of Education*. Such precedents are beyond reconsideration, not because they are intellectually unassailable, but because for a variety of reasons they are so widely accepted by the public and the legal profession that it would not occur to any serious lawyer to challenge them.

Used in this way, the idea of a "super-precedent" is superfluous. A judicial decision is beyond direct challenge when it would not occur to anyone to attempt such a challenge. Most of the specific cases that Specter asked Alito about—for example, the decision establishing a constitutional right of minors to contraceptives—are not super-precedents in this sense. And the abortion decisions, which were Specter's main concern, are bitterly contested, as is evident from the enactment of a federal partial-birth abortion ban and the recent South Dakota law prohibiting most abortions. In defending such laws, very serious lawyers have mounted, and will continue to mount, challenges to the Court's abortion precedents.

Leaving aside the handful of unchallengeable decisions, various reasons have been offered for deferring to a constitutional decision. One mentioned by Specter is that people order their affairs in reliance on judicial decisions. There is, obviously, a cost in disturbing settled expectations. However, it is only necessary to notice another of the senator's concerns to see that these costs cannot by themselves always be a decisive factor. In fact, just prior to broaching the notion of a super-precedent, Specter asked whether Alito agreed that the Constitution embodies "the concept of a living thing" and that it "represents the values of a changing society." By now it should go without saying that in attempting to keep the Constitution up-to-date, the justices have frequently shattered the established expectations of millions of Americans.

In fact, ideas that no one had ever previously thought to advance—that the Constitution protects a right to abortion, for instance—have over and over again been suddenly handed down by the Supreme Court. These sweeping changes sometimes upset laws passed in every state, and they often undermine deeply entrenched moral norms and behaviors. (Consider, as just one possibility, the impact on social practices and widely shared understandings if the Court were to accept the invitation to keep the Constitution changing with the times by declaring heterosexual marriage laws unconstitutional.) A Court that has repeatedly set about transforming society cannot be dedicated to predictability as an overriding value.

It might be objected that it is somehow different for the Court to unsettle expectations that it had no role in creating than for it to unsettle expectations created by its own precedents. However, in important and highly celebrated instances, the Court has swept aside practices and understandings that had been validated by the Court's own prior decisions. Go back, for example, to 1896 when in the notorious case of *Plessy* v. *Ferguson* the Supreme Court determined that racially segregated public facilities did not violate the requirement of equal protection of the laws as long as the facilities were physically equal. In reliance on this decision, states across the South extended Jim Crow until public services ranging from public schools to drinking fountains were legally segregated.

This apartheid, as everyone knows, remained legally entrenched until 1954, when the Supreme Court in *Brown* held that racially segregated schools could not be equal. *Brown*, now an acknowledged illustration of an unchallengeable precedent, began the destruction of a way of life that the Court itself had helped to put in place. The cruelty and prejudice inherent in that way of life should not obscure what decades of bitter, sometimes violent resistance to desegregation amply demonstrated—that the Court's long campaign against segregation was an assault on deeply held expectations and long established patterns of behavior. Obviously, some

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things are more important than public reliance on judicial decisions.

When the Court in *Casey* announced that *Roe* was a kind of super-precedent, it pointed to a range of ways in which people had come to rely on the right to abortion. It distinguished this reliance from the settled social expectations created by *Plessy* on the ground that the doctrine of "separate but equal" had rested on the factual assumption that legal separation of the races did not imply the inferiority of blacks unless (as the *Plessy* Court put it) "the colored race chooses to put that construction upon it." By 1954, "society's understanding of [these] facts" had changed. Thus, explained the Court, the public could see the overruling of *Plessy* as being based on a new understanding of human psychology rather than on a change of legal principle. No such change in factual understandings could, the Court concluded, justify the defeat of the expectations generated by *Roe*.

Our current situation, then, is that the decision to overrule the separate but equal doctrine is the most celebrated legal event of the past century, while the decision establishing a right to abortion—the most legally dubious and controversial opinion of the 20th century—is an untouchable super-precedent. To say the least, this deserves some reflection.

It is true that *Plessy* contains the factual claims that the Court in *Casey* quoted. And it is also true that *Brown*, relying on some dubious social science, asserts the opposite understanding of the psychology of segregation. The existence of this empirical basis for the claims made by the justices in *Casey*, however, does not justify the Court's insistence that overruling *Roe* would be understood by the public as a more radical revision of legal principle than was overruling the doctrine of separate but equal.

While *Plessy* relied on some psychological speculation, it also stood for the broad principle that the equal protection clause was not intended "to enforce social . . . equality, or a commingling of the two races upon terms unsatisfactory to either." Similarly, while *Brown* relied on some psychological and educational speculations, it also stands for the broad principle that the equal protection clause does prohibit social inequality between blacks and whites. If there was any doubt about this broader meaning in 1954, it was quickly eliminated in the next few years as courts ordered the desegregation of public beaches, buses, golf courses, and bathhouses. In short, the most celebrated decision of our time did overrule an established legal principle upon which pervasive political expectations and moral understandings had been based.

In contrast, the Court could have overruled *Roe* without reversing any constitutional or legal principle. The *Casey* opinion begins by carefully laying out the essential aspects of *Roe* that it was declining to overrule. The first of these was that the Constitution protects the right to abortion and, therefore, "[b]efore viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure." Now, the claim that the Constitution protects a right to abortion is an interpretive legal principle, in kind much like the claim in *Plessy* that the equal protection clause does not require social equality. But the proposition that a state's interests before about the sixth month of pregnancy are not strong enough to justify prohibiting abortions or imposing substantial obstacles on abortions is not a legal principle at all. It is a moral conclusion representing a judgment about the relative importance of what appear to be two entirely incommensurate interests, the individual interest of a woman in obtaining abortions and the interest of the state in regulating or prohibiting early-term abortions.

It is an arresting question how a judge can assess whether the wide array of purposes that a woman can have in seeking an abortion are more important than a state's interest in, say, protecting potential human life or keeping a husband apprised of his wife's plan to terminate her pregnancy. (About this, the Court declared without elaboration that "the required determinations fall within judicial competence.") At any rate, the justices could have reversed *Roe*'s moral conclusion about the relative value of these interests—or they could have decided that courts are not capable of making this kind of assessment—without reversing any legal principle. *Casey*, then, declined to overrule a legal principle established in the most criticized decision of our time only if the meaning of the term "legal principle" is stretched so far as to include moral conclusions about fiercely debated personal, political, medical, and spiritual questions.

Moreover, while the scope of the public's reliance on *Plessy* was clear and undeniable, the nature of the reliance interest in *Roe* is difficult to identify. The *Casey* Court actually toys with (but dismisses) the possibility that some women might engage in unprotected sexual activity based on the expectation that they could obtain an abortion if necessary. Reversing *Roe* would leave some of these women pregnant. But, again straying rather far from conventional legal issues, the Court goes on to note the improbability of people engaging in sexual behavior because of *Roe* v. *Wade* as well as the likelihood that "reproductive planning could take virtually immediate account of any sudden restoration of state authority to ban abortions."

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The Court then considers the broader effect that the right to abortion has had on women's choices and understandings. The passage is worth examining:

> [F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion. . . . The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.

This rather self-congratulatory paragraph appears to be saying that the Court's discovery of a right to abortion initiated the emancipation of women by altering roles and values and, more concretely, by inducing women to enter into sexual relationships as well as into jobs. Of course, these changes were underway before *Roe* was decided in 1973 and were surely caused by many other factors besides the Court's decision. But even assuming *Roe* had a major part to play, how exactly would reversing *Roe* undermine any of this? Is the idea that women in the workforce would suddenly feel out of place because abortion was no longer available and that they would flee back to domesticity? Or that women who had entered into marriage or affairs because of the availability of abortion would suddenly regret their relationships?

The fact of the matter is that reversing *Roe* would not necessarily even eliminate the availability of abortion, since different states would presumably come to different judgments about how that procedure should be regulated. Consequently, reversing *Roe* might have no effect, or only minor effects, on women's expectations or behavioral patterns. Even on the assumption that abortion would be widely outlawed, the main consequences for women would be prospective, changing some decisions and attitudes and imposing some burdens. But it is difficult to see how past decisions made in reliance on *Roe* would be affected. Certainly, allowing states to regulate abortion again would not directly dismantle a pervasive social system, as overruling the doctrine of separate but equal did.

Neither the need to honor announced principles nor the desire to protect entrenched expectations provides an explanation for giving the abortion decisions the status of super-precedents; in fact, both of these considerations suggest that *Roe* should have less precedential force than *Plessy* v. *Ferguson*, which (as I have said) the Court is justly celebrated for overturning. Other sections of the *Casey* opinion, however, point us toward a fuller, if dismaying, understanding of why some of the justices think the constitutional right to abortion should be set in cement.

Much of that opinion is concerned with, and one could even say transfixed by, the fact that over the years much "political fire" has been directed at *Roe*. States have passed many statutes intended to test and limit the 1973 abortion decision, the Justice Department has several times called on the Court to reverse that decision, and many political demonstrations (as well as some violence) have been directed at both the right of abortion and the Court responsible for it. At one level, this is a very odd reason for sticking with a precedent. Political fire, after all, is an indication that a significant number of people disagree with the Court's position on abortion. To an innocent mind, the fact that many people fervently think you are wrong might be a reason to suspect that perhaps you are wrong.

To an innocent mind, the fact that many people fervently think you are wrong might be a reason to suspect that perhaps you are wrong.

The Court sometimes sees this logic, or at least a happy corollary. That is, it is inclined to see agreement as a reason to think its decisions are right. Recently, for instance, the Court refused to allow Congress to make changes in the regime of police warnings to suspects required by the once heavily criticized *Miranda* decision. The police, you see, had eventually come to accept the required procedures, and, indeed, the warnings had become accepted as "a part of our national culture." Again, the obvious thought would be that judicial decisions that do not generate this kind of acceptance ought to have less precedential weight. But the justices in *Casey* give a portentous reason for why the fact of strong disagreement with *Roe* is a reason to refuse to overrule it.

If *Roe* were overturned, the country would, said the Court, pay a "terrible price." Because *Roe* had resolved an "intensely divisive controversy" and, indeed, had called the opposing sides in this controversy "to end their . . . division," reversing *Roe* would be seen by the general public as a "surrender to political pressure." In particular, citizens who had supported the right to abortion out of respect for the Court's authority and despite intense criticism of *Roe* would feel betrayed by a reversal and naturally believe that the Court had capitulated to political pressure. Perceived as a political institution, the Court would lose legitimacy.

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More ominously, since the American people's capacity to see themselves as living under the rule of law is tied to "their understanding of the Court invested with the authority to . . . speak before all others for their constitutional ideals," undermining the Court's legitimacy would threaten American constitutionalism and, in the end, the "Nation's commitment to the rule of law." Thus intense opposition to the original abortion decision becomes a reason, not to doubt that decision, but to reaffirm it. Our very nationhood depends on it.

No wonder Specter asked if *Roe* were not now super-precedent. When asked about the weighty considerations discussed in *Casey*, nominee Alito replied blandly, "I think that the Court . . . should be insulated from public opinion. [Courts] should do what the law requires in all instances." But that is not precisely the argument made in *Casey*. In fact, *Casey* comes close to insisting on the opposite: that the Court should stay with a decision *wrongly* interpreting the Constitution because a reversal of that wrong decision would meet with public criticism and disapproval. Insofar as *Casey* rests on the relationship between judicial legitimacy and *stare decisis*, the Court is arguing that public opinion—in the form of attitudes about the Court—should trump law.

Of course, the *Casey* Court does not say outright that *Roe* was bad law. One would hardly expect that. But the justices do acknowledge the possibility that *Roe* might have been in error, and they do refer to "the reservations [some justices] may have in reaffirming the central holding of *Roe*." And they do say that these reservations are overcome only by a reexamination of the constitutional questions involved, "*combined with* the force of *stare decisis*" (emphasis added).

More disturbingly, *Casey* does not exactly say that following the precedent set by *Roe* is important in order to convince the public that the Court is in fact abiding by legal principle. It says, to be precise, that it is important that the Court *appear* to be abiding by legal principle. Indeed, for all its high-toned references to the rule of law, the opinion is suffused with cynicism about the relationship between law and politics. At one point, for instance, it asserts that, because the usual reasons for overruling precedent do not apply to the original abortion decision, "the Court could not pretend to be reexamining the prior law with any justification beyond present doctrinal disposition to come out differently from the Court of 1973." *Pretend?* And since when is a considered judgment that a constitutional ruling was profoundly wrong as a matter of law referred to as "a present doctrinal disposition to come out differently"?

More generally, in its discussion of judicial legitimacy, the Court in *Casey* refers to the perception of legality rather than the reality. For instance, it asserts, "There is a limit to the amount of error that can plausibly be imputed to prior Courts." Note: not the amount of error that might properly (as a matter of law) be imputed but the amount that might be made plausible to the public. *Casey* is concerned with the perception of legality more than the substance. Even as it declares that law must be separate from public opinion it elevates the public's opinion of the Court above law.

Casey's rather frantic concern for the Court's legitimacy is hard to explain. The justices had no evidence about the public's knowledge of the doctrine of precedent, no evidence that people think the Court seldom overrules prior decisions, and no evidence that the public loses respect for the Court when it does reverse a prior ruling. Moreover, it is not at all self-evident that the public thinks constitutional decisions are immune from political considerations or that this sort of realism would lead people to the conclusion that the Court is an illegitimate institution. It is quite possible, in fact, that among the general public the legitimacy of the Court is based partly on the belief that the judiciary does respond to politics and thus tends to produce results with which many people agree. It is certain that multitudes of lawyers, most law professors, and virtually all political scientists believe that the Court is influenced by political considerations. Few of these professionals, however, would therefore describe the institution as illegitimate.

That the legalistic fastidiousness of *Casey* should be invoked in a confirmation hearing is downright weird. Even as Specter grilled Alito about the need to separate law and politics, the senator was engaged in a very public process in which politicians try to affect the direction the Court will take. Specter was doing so at a time when the line between political considerations and legal considerations has largely vanished even in the way that the justices attempt to justify their judgments. The doctrine that *Roe* is a super-precedent makes completely clear—as do scores of decisions that rest on precedent rather than on the Constitution itself—that the justices (and their apologists) now believe that the authority of the Court's decisions is more important than the authority of our fundamental law.

Whether the Court plays a saner role in our political system in the years ahead will depend in large measure on whether the justices can think realistically and critically about the practice of adhering to past decisions. A necessary first step is to drop the inflated conception of the Court's role inherent in the word "super-precedent." ♦

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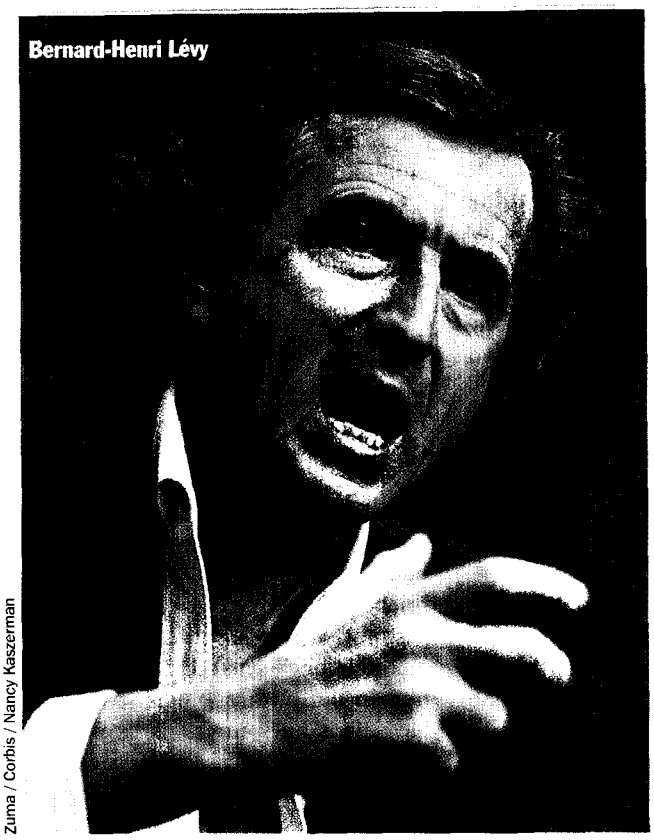
Bernard-Henri Lévy

Zuma / Corbis / Nancy Kaszerman

Alexis de Tocqueville

Bettmann / Corbis

Alexis de Wannabe

Bernard-Henri Lévy is no Tocqueville By Martha Bayles

One thing to avoid, if you are not Sharon Stone, Charlie Rose, or Norman Mailer, is having lunch with Bernard-Henri Lévy.

By all accounts he merely picks at American vittles: The *Wall Street Journal* reports him ordering nine raw clams and leaving them on the plate, which would be more impressive if they were oysters—or perhaps not, since this is a man accustomed to living, and lunching, in Paris. What he does devour, though, is American conversation. He gulps it down, can't seem to get enough of it—a consequence also of living in Paris? The trouble is, he sometimes takes home a doggie bag without paying for it.

This is what he does to Samuel P. Huntington, whom he meets in Boston and then caricatures as nuttily xenophobic: "What startling violence wells up in his blue eyes when he says to me, 'The big problem with Hispanics, is they don't like education!'" The caricature also includes a hand-wringing retraction on the sidewalk outside the restaurant, one of those mini-calumnies that can never be disproved. Then, 20 pages later, Lévy unleashes a tirade against American "minority-rights movements," including Hispanic, on the grounds that they "result in countless demands for unlimited rights, thus gnawing at public law and running the risk of dissolving the social bond."

American Vertigo
Traveling America in the Footsteps of Tocqueville
by Bernard-Henri Lévy
Translated by Charlotte Mandell
Random House, 320 pp., $24.95

This exchange reflects Lévy's ambivalence toward America's extreme and (to most Europeans) disquieting ethnic diversity. His starting point, not surprisingly, is the French ideal of foreigners being ennobled and transformed by citizenship in *la République*. And he is not entirely free of the French prejudice that sees the United States as an agglomeration of undigested lumps that "has never really been a nation-state." Yet Lévy also marvels at the surprisingly strong bonds that hold America together. And while his effort to explain the patriotism of recent immigrants (including Arab Americans in Dearborn, Michigan) and to defend the mysterious alchemy of *e pluribus unum* may be the intellectual equivalent of a soufflé (a thin batter of ideas puffed up to unnatural size), it tastes pretty good, compared with the anti-American junk food recently topping the French bestseller list.

Martha Bayles, who teaches in the honors program at Boston College, posts a blog called Serious Popcorn *at* www.artsjournal.com.

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Granted, it is hard to get too excited about Lévy's grudging admission that, come to think of it, the United States is not really the most evil, grasping, fascist/imperialist colossus ever to bestride the earth. But here, at least, he pays for his doggie bag. He confesses to having studied some (not all) of the American debate about U.S. foreign policy in the post-Cold War era, and while he does not give the dreaded neocons the final word, he makes it quite clear that he respects them, and their fellow conservatives, for actually thinking about problems like terrorism and radical Islamism—as opposed to most liberals and leftists, who seem to him to think only about Democratic party fundraising.

On two contentious questions, then, multiculturalism and foreign policy, Lévy does a good job of cutting through the *merde*. Unfortunately, the same cannot be said of his observations in three other areas: arts and letters; custom and public morality; and (most egregiously) religion.

Regarding the first, Lévy is, at best, a name-dropper. Rather than write perceptively about American music, he drools over Woody Allen playing trad-jazz at the Hotel Carlyle. About classical music, popular music, and that ubiquitous American phenomenon, rap, his silence is curious, given that his wife, the actress Arielle Dombasle, is a pop singer in France. He visits no art museums, or indeed serious museums of any kind, preferring to reduce America's cultural riches to beetle-browed antiquarianism and (echoing Eco) the theme park approach to history. About literature, he manages to be shallow, gossipy, and pretentious all at once. In Asheville, North Carolina, he speculates about how F. Scott Fitzgerald passed his days while his wife Zelda was in the insane asylum there.

Actually, Lévy's account of Fitzgerald moping around Asheville reads like a treatment for one of those arty French films in which handsome people idle their time away instead of engaging in good healthy sex and violence. In this connection it is intriguing to note that Dombasle (who was born in Connecticut and raised in Mexico, where her grandfather was French ambassador) got her first big break from the New Wave director Eric Rohmer. Perhaps this is why Lévy's prose style resembles one of those Rohmer (or Godard or Truffaut) films in which the flow of images and sounds is mercilessly explicated by a hyper-articulate male voiceover: "Aren't road and language, after all, siblings in humanity? Isn't it when both roads and languages are invented that commerce, mediation, civilization, begin?"

Please, couldn't we just look out the window?

About education, especially higher education, Lévy seems clueless. The only campus he visits is the University of Texas, in Austin, where he is astounded to find "here in . . . the capital of Texas, a state that is supposed to be a conservative stronghold," a class on Tocqueville taught by Paul Burka, executive editor of the *Texas Monthly*, in which a student approves of presidential candidate John Kerry's waffling on abortion, because "to believe one thing but refuse to impose it on other people; to have your convictions but leave other people to act the way they want—isn't that good policy? Isn't that the definition of democracy, in Tocqueville's sense?"

We don't get to hear Burka's response to this inanity, because Lévy goes into transports of delight at this glimmer of enlightenment "on the edge of the South that I'm about to dive into."

After diving, he meets Rod Dreher, a Roman Catholic journalist in Dallas who, Lévy is happy to report, homeschools his children but wants nothing to do with "those absurd fundamentalists." Here, in a nutshell, we have Lévy's tortured perception of American religion. Basically, his stance is that of an old-fashioned anthropologist intent upon sniffing out only the purest and most authentic version of an indigenous culture. He delights in a genuine Amish village in Iowa, a meeting of Orthodox rabbis in Brooklyn, and a convention of black women from the Church of God in Christ in Memphis, whose fancy clothes and gospel singing ("eyes rolling upward") suggest to him "an intensity of piety that has nothing to do with what can be observed in the megachurches of the North."

Lévy bases this pronouncement on a visit to the Willow Creek Community Church in South Barrington, Illinois, where he learned from a couple standing in line with him that (in his paraphrase), "We're a living church. Our ministers are of our time, just as Christ was of his time. And we make a point of honor to have a useful religion." This brief exposure to what is known in the pastoral trade as "seeker-sensitive methodology" sets off a violent reaction in our anthropologist. What we have here, he sputters, is "a religion whose secret is, perhaps, to get rid of the distance, the transcendence, and the remoteness of the divine that are at the heart of European theologies."

Perhaps this would be a good time to mention my French Huguenot ancestors, who came to America back in the good old 17th century, when you had to travel coach and the grace of God was not cheap. They did not want to leave France but had to, on account of the unpleasantness on St. Bartholomew's Day. And since then, many others have come to these shores hoping to worship God in their own way, and the good folk of Willow Creek are hardly the first to water down the wine.

Lévy's defense of the Old Time Religion would be more persuasive if it weren't bound up with nastiness toward America's born-again president ("an overgrown daddy's boy") and socially conservative believers ("the harpies of neo-morality"). Plus, it is curious to see Lévy the anthropologist morph into Lévy the missionary when, at Willow Creek, he stops accusing these Christian fellow travelers of over-adapting to the modern world and starts accusing them of under-adapting to it. On the day of his visit, the senior pastor (Bill Hybels, one of many names Lévy fails to catch) is absent, so minister-author Lee Strobel shows up to flog his latest book, *God Proven by Science and Scholars*, and show a video called *In the Heart of DNA*. This sends Lévy into a paroxysm of indignation,

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unmitigated by Strobel's inscribing a copy of his book—"Hi, Bernie!"—and reciting "the atheist's prayer . . . God, if you are there, show yourself!"

Damned if we do, damned if we don't. Our religious wine is either too diluted or not diluted enough. Our war paint and feathers are either too authentic or not authentic enough. American religion is a thorny topic, even for Americans. For modern Europeans, it is "baffling," as Lévy himself admits. But the topic is not made less baffling by distinctions without differences. Those "European theologies" Lévy is so fond of were rather given to theories of intelligent design, if I recall correctly. And were Lévy to ask those rustic Amish, wizened rabbis, or elegant black church ladies what they thought of Charles Darwin, their answers might set his own eyes a-rolling.

Do some more homework, BHL, and then come back and see us again. And in the meantime: "Tocqueville, if you are there, show yourself!" ♦

Master in Disguise

At 80, Samuel Menashe gets his due.

BY GARRICK DAVIS

In 2004, under the auspices of its foundation, the most venerated magazine of verse in America, *Poetry*, gave its first Neglected Masters Award to Samuel Menashe.

Though the $50,000 check is impressive in the poetry world, this new prize comes with a much greater laurel: publication in the canonical Library of America series. The first living poet to be so honored (as Philip Roth has been for fiction), Menashe finds himself, if not like Lord Byron "suddenly famous one morning," at least in the space of a year rather well known.

Library of America

Samuel Menashe
New and Selected Poems
Edited by Christopher Ricks
Library of America, 200 pp., $20

Unlike most of his contemporaries, Menashe deserves the attention. Born in 1925, the poet might be dismissed by some as an eccentric Jewish bohemian—never married, rarely employed by universities, he has lived in the same Greenwich Village apartment for close to 50 years—but his valor at the Battle of the Bulge and his doctorate from the Sorbonne should dispel such prejudices. While his own country was slow to accept him, Menashe found a warmer embrace across the Atlantic. Robert Graves, Donald Davie, Kathleen Raine, and Stephen Spender were early admirers; likewise, Christopher Ricks has written the introduction to *Samuel Menashe: New and Selected Poems*.

What did the British see that we didn't? In a word: everything. In his formal terseness, in his deep and unironic faith, Menashe is so thoroughly American that he could never be mistaken for an Anglophile. He was welcomed over there as a foreign cousin speaking the same tongue. Meanwhile, over here, he was overlooked because his work appeared to spring from no fashionable literary tradition:

From "At Millay's Grave":

Your ashes
In an urn
Buried here
Make me burn
For dear life
My candle
At one end—
Night outlasts
Wick and wax
Foe and friend

This is reminiscent of John Skelton—the great rhymer and court orator to Henry VIII—much more than any contemporary author. It also manages to eulogize Edna St. Vincent Millay, allude to her classic "First Fig," and provide Menashe's philosophical riposte to that other poem—all in 26 words. As art, it represents the purest economy of expression. The verse of such a minimalist (the longest poem in this book is 33 lines, while most are merely eight) was never certain to have a wide following, but there is much to learn from Menashe. As Ricks has noted, here is a poet who finds "not just *le mot juste* but *la lettre juste*."

Now in his 80th year, Menashe spends his days composing such gems as "Salt and Pepper" while strolling through Central Park:

Here and there
White hairs appear
On my chest—
Age seasons me
Gives me zest—
I am a sage
In the making
Sprinkled, shaking

Good humor, modesty, and charm in abundance—these traits of the author are immediately evident in the verse. Those who have heard Menashe recite his work know something else as well: He is his own ideal reader. With a voice as rich and deep as a cello, the poet sounds each line—with expert pauses and sustained vowels—in a cadence that holds the attention of his audience. Those who have only read Menashe's poems should envy the pigeons in Central Park, who daily

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benefit from overhearing his improvised compositions.

John Simon once mauled the late Robert Creeley's poems by deadpanning: "They are short; they are not short enough." Will Menashe be remembered with similar irreverence? The quality of his work should prevent such disparagement. Will he ever be popular? Perhaps, in an abbreviated age such as ours, with its short attention spans and cell phone messages, Menashe's brevity fits the temper of the times better than we know. Certainly, we desperately need the virtues of his verse at the moment; his grace in confronting old age, and his religious affirmation should do us some good as well. Samuel Menashe deserves his moment of praise. Here is his "Hallelujah":

Eyes open to praise
The play of light
Upon the ceiling—
While still abed raise
The roof this morning
Rejoice as you please
Your Maker who made
This day while you slept,
Who gives grace and ease,
Whose promise is kept. ♦

Becoming Leo Strauss

The philosopher who teaches how to think.

BY STEVEN J. LENZNER

In recent years, the political philosopher Leo Strauss (1899-1973) has become something of a household name. This has been a mixed blessing.

With a few notable exceptions, reports in the press, journals, and even the odd book have betrayed a scandalous incompetence in their presentation of Strauss's thought and his "sinister" influence. Of course, these efforts will soon be forgotten, their damage to the study of Strauss's thought minimal. Strauss's work is of such a character that it will inevitably receive the attention of the thoughtful and open-minded. Still, it would be a great misfortune if this opportunity to introduce the newly famous/infamous Strauss to students today were squandered. For this reason, Heinrich Meier's excellent *Leo Strauss and the Theologico-Political Problem* is particularly timely and welcome.

Leo Strauss and the Theologico-Political Problem
by Heinrich Meier
Translated by Marcus Brainard
Cambridge, 224 pp., $60

With its publication, Meier is bound to begin to receive the sort of attention here that he has enjoyed in Europe as a prominent interpreter of Rousseau, the political theologian Carl Schmitt, and, above all, Leo Strauss. Indeed, it is no exaggeration to say that his monumental editorial labors and outstanding scholarship have made Meier—director of the Carol Friedrich von Siemens Foundation and professor of philosophy at the University of Munich—largely responsible for making Strauss a subject of serious study in Europe. Those editorial labors have already produced three massive volumes of Strauss's collected writings, with two more slated to appear in the coming years. He has made widely available Strauss's early books on Spinoza and Maimonides (in the original German), as well as all of the young Strauss's shorter works, including some whose existence was previously unknown. In addition, Meier has uncovered a complete, hitherto unknown Strauss manuscript on Hobbes's critique of religion, and has published the remarkable correspondence between Strauss and some of his most distinguished contemporaries, including Jacob Klein and Gershom Scholem.

According to Machiavelli, there is no good thing, however splendid, that does not have its accompanying "inconvenience." Whatever the general merits of this contention, it certainly holds true in the academic world. Scholars have a gift for alchemy, of a peculiar kind: They transform the valuable into dust. Meier's focus on the early Strauss in the first volumes of the collected writings was, in part, dictated by the "scholarly" desire to fill the gaps in a remarkably incomplete historical record. Yet far more fundamental was his desire to understand, and to make understandable, the philosophic thoughts of the mature Strauss, the author of such works as *Natural Right and History* (1953) *Thoughts on Machiavelli* (1958), and *Socrates and Aristophanes* (1966). In seeking to explicate "How Strauss Became Strauss," Meier does not provide a genetic account of Strauss's "development" that reduces the philosopher Strauss to a product of the opinions and influences of his youth. Yet, in recent years, Meier's labors have occasionally been used (and abused) by academics as part of their procrustean attempt to reduce Strauss to another case study in 20th-century intellectual history.

Put another way, the scholars in question seek to understand the late Strauss in light of the early one. Meier takes precisely the opposite approach: He seeks to understand the young Strauss in light of the mature one. He attempts to uncover the key insights that allowed, or caused, Strauss to *become* Strauss. In doing so, he takes guidance from the handful of personal statements Strauss made in his later years regarding the decisive moments in his philosophic education.

Three such statements stand out. In his 1965 "Preface to Spinoza's Critique of Religion"—the "autobiographical preface"—Strauss speaks of "a change of orientation" in his thought that was first given voice in a 1932 review essay

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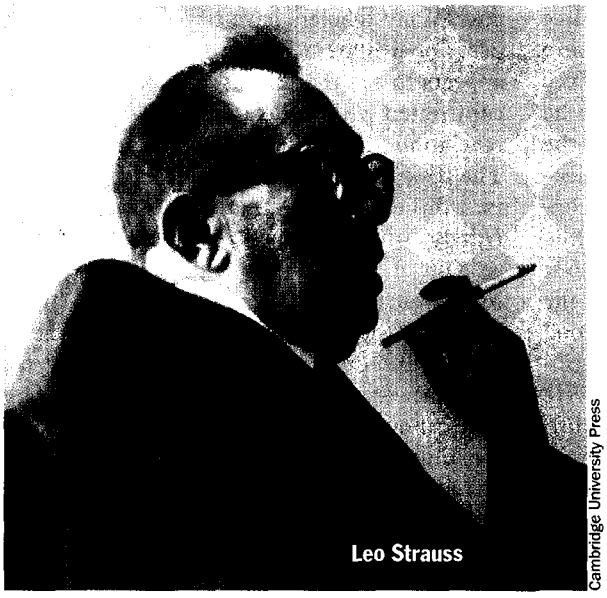
of Carl Schmitt's *The Concept of the Political*. In 1970, Strauss remarked that it was coming across a sentence of the Arab philosopher and physician Avicenna—"The standard work on prophecy and revelation is Plato's *Laws*"—that allowed him, as a young man, to begin to understand Maimonides. That understanding, in turn, led to his famous rediscovery, in the late 1930s, of exoteric writing. Finally, there is Strauss's statement in his 1965 preface to the publication of the German original of *The Political Philosophy of Hobbes* (1936):

> My study of Hobbes began in the context of an investigation of the origins of biblical criticism in the 17th century, namely of Spinoza's Theologico-Political Treatise. The reawakening of theology, which for me is marked by the names of Karl Barth and Franz Rosenzweig, appeared to make it necessary to investigate how far the critique of orthodox theology—Jewish and Christian—deserved to be victorious. Since then the theologico-political problem has remained the theme of my investigations.

That first statement provided the theme of Meier's first book on Strauss, *Carl Schmitt and Leo Strauss: The Hidden Dialogue*, and the third statement provides the theme for this volume. In *The Hidden Dialogue*, Meier showed how Schmitt substantially amended subsequent editions of *The Concept of the Political* in response to Strauss's pointed 1932 critique, "Notes on *The Concept of the Political*." That critique presented Schmitt's fundamental intention more clearly and coherently than the author had himself.

At first glance, the book reads as if Meier's main concern is to delineate the contours of Schmitt's political theology, with Strauss cast in the supporting role of guide; and this is how it was widely received. Yet it is clear that Meier is at least as interested in articulating—and is far more impressed by—the alternative of political philosophy to which Strauss's "Notes" point.

Strauss showed that the underlying basis of Schmitt's affirmation of the political was a profound dissatisfaction with liberalism—that is, with liberal universalism and its aspirations for boundless security and a life that seeks fulfillment in the "interesting and entertaining." Liberalism, according to Schmitt, was above all a rejection of the political, the characteristic distinction of which he held to be the division into "friends" and "enemies." Such a life—lacking the passion and commitment that would lead one to die for a cause—seemed to Schmitt a rejection of all that was high and vital in man. So, Schmitt preached commitment and enmity; in Strauss's words: "He who affirms the political as such respects all who want to fight."


Leo Strauss

Cambridge University Press

Strauss was no more attracted to a debased liberalism than was Schmitt, but he sought not to negate it but to ascend from it. Like Schmitt, he asked, "What is the right way of life?" Yet unlike Schmitt, Strauss was unwilling to rest satisfied simply with *any* form of political commitment. When he raised the Socratic question, he did so in a Socratic manner—with a view to discovering the true answer. And in so doing, Strauss refounded political philosophy.

In *The Hidden Dialogue*, Meier paints a picture of political philosophy rediscovering itself in the confrontation with political theology. Now, in *Leo Strauss and the Theologico-Political Problem*, he sets himself a similar, albeit more ambitious, goal; for in his title essay Meier seeks, to show how philosophy discovers itself in the confrontation with the claims of revealed religion. That impressive essay is one of four, a work that—in conjunction with *The Hidden Dialogue* and an intermediate volume entitled *The Lesson of Carl Schmitt: Four Chapters on the Distinction between Political Theology and Political Philosophy*—constitutes an illumination of the distinguishing characteristics of philosophy, political philosophy, and political theology. (In addition, the book is graced by two remarkable Strauss essays—"Reason and Revelation" and "Living Issues in Postwar German Philosophy"—discovered by Meier among the Strauss papers, and which will be of interest to any serious student of political philosophy.)

In Meier's first chapter, he highlights Strauss's identification of "the theologico-political problem" as "*the* theme of my investigations," and shows why any understanding of Strauss requires coherent reflection on that singularly enigmatic statement. Meier's second chapter, "The History of Philosophy and the Intention of the Philosopher," examines the relative status for Strauss of a philosopher's historical influence, on the one hand, and his philosophic intention. In this *tour de force* Meier enables us to see that, for Strauss, a philosopher's "intention" is of far greater importance than his doctrinal teaching and ascribed influence: A philosopher's intention is revealed by the manner in which he engages the true objects of philosophical reflection, those objects identified by Strauss as "the fundamental and permanent problems."

In tracing the "influence" of a philosophic doctrine, by way of contrast, it is the usual practice to contend with the manner in which a philosopher's teaching is distorted, either when employed for broad practical aims or repackaged for mass consumption. A philosopher's *intention* con-

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cerns his thoughts about the most important problems. The history of philosophy treats the way those same thoughts have been most frequently and powerfully misunderstood. Meier's final two chapters help us to realize just how revolutionary was Strauss's refounding of political philosophy. For, as he notes in his introduction, that refounding "granted the concept 'political philosophy' a weight and a visibility that it never had before." Strauss's historical and scholarly enterprise had more than its fair share of "originality."

It would be impossible to do justice here to Meier's complex exposition and arguments. It *is* possible to convey something of the care with which he supports the assertion that begins the chapter entitled "The Theologico-Political Problem": "Nothing is as controversial in the thought of Leo Strauss and nothing is as central to it as a proper understanding of it as the theologico-political problem." A good deal of the controversy can be attributed to Strauss's own reticence: He rarely speaks of the "theologico-political" as such, and he deems it a "problem" only in the autobiographical passage I quoted earlier. Meier mined the whole of Strauss's writings and found only two additional statements in which he "employs the epithet 'theologico-political' in his own name to characterize his historical situation, his theme, and his endeavor."

What Meier understands the theologico-political problem to be can be gleaned from his definition of a "theologico-political treatise" as "a philosophical writing that faces the theological and the political alternative and that leads, by way of the confrontation with the demands of politics and religion, to philosophy." For Meier, that alternative is, above all, the claim of Biblical revelation, which "represents both a theoretical and an existential challenge" to philosophy. Revelation challenges philosophy theoretically by calling into question philosophy's contention that free inquiry is the sole and sufficient means to pursue the truth about the most important matters. Moreover, it challenges "philosophy existentially by confronting philosophy with the commandment of obedience, which rejects the philosophical life in the name of the highest authority conceivable and imposes on that life the severest sanction imaginable."

Such challenges call into question the very reasonableness of the life devoted to reason and, if left unanswered, seem to expose that way of life as nothing more than the product of an arbitrary whim or willful decision. No doubt for good reasons, Strauss declined to set forth explicitly what the philosophic response is—though at a cost: Many scholars have seized upon occasional statements in which he appears to say that philosophy, when confronted with the claims of divine revelation, betrays its incoherence. The most famous such passage occurs in a discussion in *Natural Right and History* where Strauss provides an account of the considerations that led Max Weber (*not* Strauss himself) to despair of the very possibility of a reasonable life devoted to reason: "The mere fact that philosophy and revelation cannot refute each other would constitute the refutation of philosophy by revelation."

Meier makes abundantly clear why this apparent conclusion cannot reasonably be taken as Strauss's last, or considered, word on the matter. Moreover, by using Strauss's writings to construct an account of the philosophical response to the challenge presented by revelation, Meier demonstrates why reticence should not be confused with having nothing to say. Meier's intention is not to settle the debate about what the "theologico-political" problem is, but to *begin* it in a manner that does justice to the considerable demands that Strauss's writings place on the reader.

Let me note here two questions that are prompted by Meier's arguments and reflections. Meier contends that the advent of revelation necessitates a change in the character of philosophy: To realize itself fully, philosophy, he suggests, needs revelation. Yet even if the conditions of one age are particularly congenial to the rise and flourishing of philosophy, doesn't Strauss maintain that philosophy is a permanent possibility accessible to man as man? And can it be such a possibility if it is not always, in principle, capable of full realization?

Second, it is worth asking whether Meier's articulation of "the theologico-political problem" as "the unifying theme of [Strauss's] studies" is gainsaid by the "surface" of Strauss's works. In *The City and Man*, Strauss wrote: "The literary question properly understood is the question of the relation between society and philosophy." Is there a way in which this question—far and away the most prominent in Strauss's corpus—could be further reformulated, and understood, as the "theologico-political problem"?

These questions can only be answered, as Meier suggests, by an intensive study of Strauss's "most carefully written books"—those works that contain "his farthest reaching reflections, his most profound thoughts, and his most challenging considerations." A good place to start would be *Thoughts on Machiavelli*, which is, at once, Strauss's greatest, most misunderstood, and most neglected book, and the one to which Strauss confides his own "thoughts." Meier not only identifies *Thoughts* as Strauss's "most astonishing book," but also makes the truly remarkable claim that it is "the most carefully written treatise on revealed religion." So Meier suggests that *Thoughts* surpasses in artistry such works as Thomas Aquinas's *Summa Theologica* and Maimonides' *Guide of the Perplexed*!

No lesson in *Leo Strauss and the Theologico-Political Problem* is as simple and valuable as what Meier conveys by the manner in which he approaches Strauss and his books. In contrast to the widespread abuse of mining Strauss's works for snippets that ostensibly show Strauss's "agenda," Meier treats them as invitations to think about the most important problems; that is, to philosophize. And by serving as a timely and enticing summons to accept Strauss's generosity, Meier's work helps us begin to understand the greatness of Strauss as a philosopher. That is an achievement worthy of note and gratitude. ♦

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His Vichy Gamble

The decline and fall of a marshal of France.

BY EDWIN M. YODER JR.

Pétain and Hitler, 1940

Getty Hulton Archive

The case of Philippe Pétain, sometime marshal of France, presents an intriguing study in the historiography of reputation. "It is always a mistake to end up on the wrong side of history," writes Charles Williams, regarding Pétain's decision to head the collaborationist Vichy regime after the fall of France in 1940. Since no one volunteers for such a destiny, this seems an odd use of the word "mistake," as odd as it is in Faulkner's *Absalom, Absalom!* when Colonel Sutpen describes his failures of human sympathy as "mistakes"—as if shunning one's own children were somewhat like miscounting a stack of dollar bills.

Pétain
How the Hero of France Became a Convicted Traitor and Changed the Course of History
by Charles Williams
Palgrave, 320 pp., $29.95

There certainly was a time when Pétain's "mistake" seemed ineradicable. He was not so far beyond historical redemption as Vidkun Quisling, the puppet president of Norway, and indeed the gist of Williams's present study is that Pétain was a reluctant collaborationist. The further difference between Pétain and Quisling is that when France fell to the Nazi Blitzkrieg in May 1940, Pétain was already a heroic figure who had twice "saved" France in the previous world war. Having risen from colonel on the retirement list and former theorist of infantry tactics at the Ecole Militaire to high command, it was he who directed the defense of Verdun in 1916 and, in the summer of 1917, subdued a brewing mutiny that infected half the divisions of the French Army and could have led to an Allied collapse. For these achievements, Pétain in 1940 was venerated by many of his countrymen (and not least by himself, which was part of the difficulty) as the man who could uniquely manage national salvation. But that salvation was oddly defined: He would stay in France and "offer his person" to the preservation of mythic France.

When this reviewer had the good fortune to study the history of the Third Republic under one of its preeminent historians, the late Philip Williams, the explanation for national collapse seemed obvious. Pétain's flaws were, in some ways, those of his nation. To begin with, France in the 1920s and '30s had suffered from a demographic hangover from the 1914-1918 war: a dearth of young men, producing a deficit of military recruits. France was radically divided in the face of the rise of Hitler and Stalin, torn between the leftist Popular Front of Léon Blum and quasi-fascist sympathizers with Hitler on the right. *Mieux Hitler que Blum* was the astonishing motto of some of the latter: Better the Nazis than a Socialist premier willing to coalesce with the far left. The result was that France's splintered party system was unable to generate a stable governing consensus. Nor could it overcome the fatalism and passivity that were also legacies of the First World War.

By the 1930s, finally, a defensive mentality had expressed itself in the Maginot Line (suddenly useless when Belgium went over to neutrality). Add the staggering casualties of the spring of 1940 and you had the formula for collapse. It was Pétain, the last surviving marshal of the First World War, to whom the demoralized politicians turned. It was he, the former peasant boy from the Pas-de-Calais, risen by merit, who would assume responsibility for dealing with Hitler. Never has one who supped with the devil needed a longer spoon, and Pétain's was far too short.

The asset that Pétain did bring to the shabby capitulationist Vichy regime ("the funeral procession of [France], of which M. le Maréchal was the decrepit pallbearer," in the vivid words of Gen. Sir Edward Spears) was a certain cunning and patriotic attachment to the mystical idea of eternal France. That France would live, even if the rickety political state died. As Pétain put it in that mystic tongue he shared with his protégé, Charles de Gaulle, he would offer his

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person to his "children," the French.

A former deputy leader of the British House of Lords, Charles Williams has a seasoned grasp of political subtleties, and has made himself master of this tangled tale, in a book that is explanatory without being either accusatory or exculpatory. Yet in the end it is unclear that this very French tale is fully or clearly accessible to the Anglo-American political understanding. A salient sense of the nature of Pétain's "mistake" remains elusive. True, as head of the Vichy state, he accepted formal responsibility for some evil concessions: the end of the National Assembly, the promulgation of racial laws, the deportation of 75,000 Jews, many to die in the east, and the forced removal of scores of thousands of French workers to man German industry. And, later, the formation of the villainous Milice, collaborationist vigilante enforcers of the Nazi occupation.

What is harder to measure is the depth of Pétain's *moral* responsibility for measures he was powerless to veto but eager to temper or subvert. His intimates were confident that he was playing a canny double game—for instance signaling to his deputy, Admiral Darlan, in Algiers, that he should disregard formal instructions and cooperate with the Americans and British. He managed to keep the French fleet, what was left of it after the British naval assault at Mers-el-Kebir, out of German hands. And too late for his own good he seems to have authorized overtures to the British that he might leave France after all: an overture summarily rejected by Harold Macmillan, who after 1943 and Operation Torch was the resident British administrator in Algiers. Macmillan's failure to respond affirmatively to this overture, the author says in one of his sternest judgments, "defies rational explanation," given its potential benefits to the Allied cause.

No doubt, one factor in the historical verdict against Pétain is that he had aligned himself at some stage with the European right. He resisted overt political identity, and his private views remained opaque. But he had been warm friends in the 1920s with General Miguel Primo de Rivera, the proto-fascist dictator of Spain and, as French ambassador to Spain in the following decade, had been as close to Francisco Franco as the latter's icy personality allowed.

The penultimate act of the Pétain drama came in April 1945, when Pétain's German minders turned him over to the Swiss, who were prepared to offer him asylum. He could have stayed in Switzerland but he insisted on returning to France for trial; and the trial was even murkier than the cloudy facts of his disgrace. The indictment skipped what to many seemed the gravest offenses of the Vichy regime and dwelt upon constitutional details: the notional treason of Pétain's having assented to the self-dissolution of the National Assembly. This in itself was odd, since De Gaulle himself rejected the premise that the Third Republic had ended in 1940, and insisted that the Vichy regime was a usurpation, a "parenthesis" between lawful governments. De Gaulle, for that matter, would have been happier had his old mentor stayed in exile. The court that judged Pétain for treason was an oddity—three regular judges plus 24 so-called *jurés*, lay members chosen by lot from among representatives of the Resistance and the National Assembly. The three judges voted for acquittal. The lay members voted narrowly for the death penalty, which De Gaulle commuted. The old marshal, stripped of his dignities, lived for another six years, imprisoned on a bleak Atlantic island, and died in his 95th year.

Charles Williams has written a searching examination of this tragic but sometimes opaque story. The final effect is less to move the marshal from the "wrong" to the "right" side of history (wherever that abstract Valhalla may be) than to show how a patriot, twice his nation's savior, could stumble by generous but mistaken judgments into bad company and thence into the outer darkness. ♦

The Price of Denial

Why Turkey needs to come to terms with history.

BY ELLEN BORK

The Armenian Genocide
PBS, April 17

In Istanbul last October, an acquaintance invited me to lunch with three participants in a conference of historians, journalists, and civil society activists that had recently been held at Bilgi University. Its subject was the fate of Armenians in Turkey during the early part of the 20th century.

Although it received far less attention abroad than the prosecution of novelist Orhan Pamuk for speaking publicly about the deaths of over one million Armenians and tens of thousands of Kurds, the conference was just as significant, demonstrating Turkish civil society's growing self-confidence in questioning the official line on the Armenian genocide—and the ruling AKP party's messy flexibility in allowing such questioning to take place. Postponed, then blocked in court after the justice minister called it a "stab in the Turkish nation's back," the conference finally took place with the public support of the prime minister.

According to my lunch companions, the conference participants agreed, as one put it, that these mas-

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Bettmann / Corbis

Armenian dead in Eastern Turkey, June 1919

sacres were "deliberately done by a small group within the ruling party." In other words, without using the word "genocide," the specific elements of its definition are increasingly being accepted by Turkish society.

Describing the fate of the Armenians in Turkey as genocide is much less charged in the United States. "Turkish deniers are becoming the equivalent—socially, culturally—of Holocaust deniers," says author Samantha Power in *The Armenian Genocide*, a documentary by Andrew Goldberg and Two Cats Productions, to be broadcast Monday, April 17, on PBS. The one-hour program provides a compact, evocative, and visually rich treatment of the massacres by the Ottoman sultan's Hamidiye regiments in the late 19th century, and the 1915 deportations and massacres of approximately one million Armenians, including intellectuals from Constantinople, as Istanbul was then called. It also includes the campaign of assassination against Turkish diplomats by Armenian terrorists in the 1970s and '80s.

Even here, however, the matter remains fraught. When PBS decided to follow the documentary with a 25-minute debate among academics and authors, there were objections that this would suggest the genocide itself was in question. Some individual PBS stations, including the Washington and New York stations, have decided not to air the panel discussion.

The reason controversy persists has little to do with scholarship and everything to do with the role the United States plays as a battleground for efforts to achieve official recognition of the genocide. While the Armenian-American community ensures that the issue is brought up annually before Congress, Turkey, a NATO ally with a high diplomatic profile in Washington, wages a campaign that can be presumptuous. Speaking to the Congressional Study Group on Turkey last month, the Turkish ambassador admonished American congressmen to do their patriotic duty by voting down resolutions recognizing the genocide.

Paradoxically, the importance of the Holocaust to Americans ensures both sensitivity to the Armenian tragedy and a reluctance to accord it the significance of genocide. There is also a disinclination to criticize Turkey, a valuable Muslim ally of Israel. These considerations inform the views of Turkey's allies in the foreign policy establishment, of which conservatives constitute a significant part. Within the conservative camp, criticism of Turkey recently has been concerned mainly with an Islamic tilt under the ruling AKP, and growing anti-Americanism across the Turkish political spectrum. And, of course, Turkey's refusal to provide support for the Iraq war.

Little concern has been expressed about persisting limits on speech, which are frequently connected (in the Pamuk case and many others) to criticisms of Turkey's treatment of minorities, and its relationship to a Turkish national identity forged during a period of instability and imperial collapse.

As *The Armenian Genocide* demonstrates, it is precisely this historical background upon which a specious, yet persistent, objection to recognition of the genocide is based. In its most

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respectable form it is the contention that the deportations, massacres, and starvation of Armenians took place in a particular "context"—that is, amid (or in response to) rebellion and treachery from Turkey's Armenian population, in league with Russia.

"So, if the Armenians killed and were killed," Yusuf Halacoglu, head of the Turkish Historical Society, says in the film, "the fact is there were two sides involved in a civil war." The argument boils down to a claim that the events were not genocide but a response to provocation in which the victims, including unarmed women, children, and the elderly, brought on their fate.

It is a variation on the argument, made by some in the 1990s, that there was no obligation to stop the killing of Muslims by Serbs in Bosnia since the people of the region had been "killing each other for centuries." Both justifications are red herrings, which can be effective when made with confidence by articulate proponents.

In the documentary, Turkish historians reject this claim, providing historical context that enhances rather than undermines an understanding of the fate of the Armenians as genocide. The loss of Balkan territory, the flow of refugees from these Christian quarters of the empire telling of persecution—all combined, says Taner Akcam, to make "fear of collapse . . . [the] basic factor of the emergence of Turkish nationalism."

The effects of this fear have been profound, and the documentary's most compelling moments come when the Turkish historians describe their experience with their society's most stubborn taboo. Halil Berktay received death threats for being a "Turkish historian inside Turkey that has spoken up." He argues that the new Turkish republic, launched in 1923, dissociated itself from the past by adopting attributes of Western society, including secularism, and found itself embraced and courted by Western powers.

"All kinds of reasons like this made it undesirable for the young republic to maintain an honest memory of what had been done in 1915," says Berktay, and "as a result, you have an enormously constructed, fabricated, manipulated, national memory."

After decades of denial and silence, it took an act of courage for these historians to question the official version. Fatma Müge Göcek expresses the confusion she felt upon realizing "you could actually live in a society, get the best education that society has to offer, which I did, and not know about it or have any books or anything available to read about it."

This situation is changing, as this documentary and events like the Bilgi conference make clear. While my acquaintances in Istanbul have complicated feelings about international pressure on Turkey to confront its past, America has been involved from the outset. Reporters and diplomats relayed news of the atrocities, and charity appeals raised enormous sums, all of which is documented in the film. For some Turks, it was in the United States that they found the freedom, the libraries, and the contacts with Armenian Americans that enabled them to delve into the past and develop independent judgments. Of course, the U.S. government is still the prime target of Turkish efforts to prevent official recognition of the genocide.

It will be up to the Turks to come to a complete understanding of their past, and consolidate their democratic institutions and civil liberties. In the meantime, less deference to the Turkish official position would put America on the side not only of justice for genocide victims, but also of Turks, like the historians in this film, who refuse to accept limits on their speech and scholarship. ♦

Wretched Excess

'Basic Instinct 2' raises Hollywood to new depths.

BY JOHN PODHORETZ

The colossal failure of the sequel to the mammoth 1992 hit *Basic Instinct* is primarily due to the new movie's colossal wretchedness. Jonathan Yardley once said of a book he disliked that it was "so bad that it adds whole new universes of meaning to 'bad.'" *Basic Instinct 2* doesn't quite sink to those infinite depths, in part because it makes no effort whatsoever to be good, or even minimally interesting. It exists merely to pay exorbitant and undeserved fees to its producers and its over-the-hill star, Sharon Stone, who evidently collected $14 million at a time when she couldn't get a major Hollywood studio to pay her 14 cents to headline a film. But it's still among the worst motion pictures you will probably never see.

Basic Instinct 2
Directed by Michael Caton-Jones

Basic Instinct 2 is beneath discussion except for the change it heralds in moviegoing tastes and, if it's not stretching it too much, American society as a whole since the release of the original film 14 years ago. At the time, *Basic Instinct* seemed to herald the dawn of a new age of explicit Hollywood moviemaking. But in fact it proved to be the last moment at which it was still possible for mainstream Hollywood to release a film that had the capacity to shock and titillate with its graphic sexuality.

Hollywood threw nominations at films featuring nudity and actresses willing to shed their tops. Between 1969

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and 1982, five Best Picture winners featured nude scenes, while four winners for Best Actress and two Supporting Actress winners appeared unclothed (and at least a dozen female nominees did so as well). Like a seducer who talks a woman into bed by promising he will still respect her in the morning, Hollywood was offering every possible inducement to desperate actresses to bare it all. By doing so, Hollywood was saying with its prizes, actresses were conforming to the highest standards of their art. And if that weren't enough, they were also opening society's eyes, liberating the masses from the shackles of bourgeois morality.

Sony Picture Entertainment / Jaap Buitendijk

Terence Harvey, Sharon Stone

It was all nonsense, of course. The sexual revolution came at a propitious moment for Hollywood, just as the old studio system was melting down. Motion pictures had to have something Americans could not get from watching television, and after years of technological gimmickry like 3-D and Cinerama and VistaVision and Smell-O-Vision and God knows what else, Hollywood grabbed onto sex and violence as though they were life rafts.

Of course, the era of high-toned nudity didn't last very long, as female stars began to wise up and realize they were being had. Going nude wasn't a badge of artistic honor for an actress; it was a marketing ploy for a motion picture, a way of getting men into the movie theater. And after the widespread introduction of cable television and VCRs into American households in the late 1970s and early '80s, movie theaters lost their monopoly on cinematic nudity.

Nudity increasingly became the province of B movies: horror pictures in which naked women were paraded and then killed in gruesome ways, and teen sex comedies in which the successful conquest of a conveniently unclad beauty was the unironic reward for aggressively obnoxious behavior. These movies were basically Xeroxed, dozens if not hundreds of times, to fill the insatiable need of cable channels and video stores for salacious material. And just as cable and the VCR brought an end to the sordid porno theaters that cast a pall over every neighborhood unlucky to have one, so did they allow the soft-core audience to use these cinematic sexual aids in the privacy of their own homes.

On occasion, big-studio Hollywood would still present a self-consciously "erotic" crowd-pleaser—offering lurid hints of sadomasochism in *9 1/2 Weeks* or rape fantasies in *Thief of Hearts*. But the appetite of the moviegoing public for such fare was growing ever more limited, even as such films would score record ratings on cable, fly off video-store shelves, and create a new model for several hundred new Xeroxes.

Only once, really, did a genuinely filthy mainstream Hollywood picture strike it big, and that was the original *Basic Instinct*—a brilliantly-made thriller in which a bisexual woman goes around San Francisco killing men with an ice pick. At one moment, *Basic Instinct* is the ultimate male fantasy about a completely uninhibited woman, while at the next it's the ultimate male nightmare about a woman so cold she would kill you as soon as look at you. It's lascivious and Puritanical in equal measure, a movie that says sex will probably kill you and, what's more, you'll deserve it. But man, what a way to go.

Basic Instinct became a sensation because it rides its mixed messages all the way to a daringly unrealized conclusion that leaves us in perpetual doubt as to who the real killer is. That playful trickery is entirely absent from this endless and lethargic sequel. And while Sharon Stone tries to be as shockingly exhibitionistic in the sequel as she was in the original, she is defeated not only by her advancing age (48) but also by changes in the culture since 1992.

Her character, Catherine Tramell, did things no mainstream audience had ever quite seen before. Now, however, her salacious conduct has lost its power to shock. You can see worse on reality television. In 2006, every 20-year-old cast member on MTV's *The Real World* conducts herself like a mini-Catherine—sharing a lesbian peck in a hot tub one minute, and pulling off her shirt in a bar the next (her nudity obscured by optical camera effects).

And what do these shining examples of American maidenhood want? Are they doing it to serve a director's artistic vision? To express the power of female sexuality? To help America get over its bourgeois hang-ups? No, they're doing it for the same reason Sharon Stone did it: Because they want to be immortalized, and they can't figure out any other way to achieve it.

Sharon Stone got paid to show her all. The stars of *The Real World* do it for free. Who's better? Who's worse? And aren't these the sorts of questions that might make one wonder whether God will soon be provoked enough to void his covenant with Abraham, and bring about the second Great Flood? ♦

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NBC executives announced that morning host Katie Couric is to leave the Today show and accept an offer from CBS to become the first woman to anchor a network evening newscast on her own.
—News item

Parody

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say unto you, upon this Black Rock I will build my network.

22 Then all the mighty host, of the armies of Kendrick and Collingwood, and Burdett and Pierpoint, descended upon the aged Murrow, who was alone in his abode, much vexed and troubled, and who crieth unto them and to the great Paley: Why hast my vision been sore afflicted, by the merchants and the moneychangers, and by the smooth voices that talk happily, as bidden by the tribes of Nielsen and Magid? Surely, this is a harvest of shame!

2 And his lamentation was heard among the nations. To which the great Paley, and his consort Babe, whose garments shone in the sunlight, replieth: Thy golden age is but the blink of an eye, set among the generations that hath guffawed at the beloved Lucy, and the Clampetts of the Hills of Beverly, and all their kin. Henceforth, get thee to the wilderness, and thy chamber shall be the house of the huckster who hath glorified the trade among nations, forevermore!

3 And so, with a cunning blow, the great Paley cast the sainted Murrow into frightful exile, and summoned the avuncular Cronkite from the fields of toil, he of the hairy lip and furrowed brow, who swore to obey the Law of the Black Rock and, in the fullness of time, grew to such stature in the prospering Land that even the mighty Pharaoh, in his agony, was wont to cry to the assembled Valenti, When I hath lost Cronkite, the nation is no longer mine.

4 When the great Paley heard of this, his jealousy aboundeth. And lo, when Cronkite hath sprouted gray hairs, and counted five and sixty years in his age, the great Paley in his selfish wisdom cast him unto the realm of inner darkness, to fret and tarry at the borders of the kingdom, and anointed the wildest of tribesmen, Rather, to ascend the throne and read the messages.

5 Now, when the great Paley hath come to die, he summoned the prodigal Cronkite to his lair, and declared: O! ye trusted man of the nation, how I hath wronged thee! For Rather, who sings of courage to the setting Sun, and asketh the questions of Kenneth, is but a speck of rain in a ravenous desert, and driveth the ratings into the ground. And the great Paley gave up the ghost.

6 After many years had passed, it hath been told, the elders of the tribe, and the bloggers in their sleeping vestments, hardened their hearts and summoned the spiteful Rather, who was commanded to join Cronkite and Murrow's ghost in the borderlands. But verily, having smoteth the impious Rather, they knew not which way to turn, and prayed unto God for a sign to deliver Black Rock from the thrall of the aged Schieffer.

7 Awake! saith the Lord, and turn thine eyes unto the Hills of NBC, where as the Sun riseth at dawn, she of the great mouth, the she-woman Couric, hath summoned her bounteous perk and sent forth her legions of lawyers unto thy kingdom! And so, unto the throne of Murrow and Cronkite and Rather, out of the Land of Babble, from the camp of the Lauer and Roker, sitteth Couric, divine reader of news, unto eternity.

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In the new issue of the Hoover Digest . . .

China and the Cure for Poverty

Acquiring wealth the old-fashioned way

China is now said to be lifting a million people a month out of poverty. You can bet the rent money that the Left will show little interest in how China is managing this feat. The Left showed far more interest in China back when it was run by Mao in far-left fashion–and when millions of Chinese were starving.

Those of us who are not on the Left ought to take a closer look. After the death of Mao, government controls over the market began to relax–first tentatively, in select places and for select industries. Then, as those places and those industries began to prosper dramatically, similar relaxations of government control took place elsewhere, with similar results.

The Chinese acquired wealth the old-fashioned way: They created it.

—Thomas Sowell

How Tehran Can Yet Be Tamed

Washington should exploit the power struggle now taking place in Iran

On the surface, the regime in Tehran seems to stand together. Behind the scenes, however, a fierce struggle is under way. In one camp are Ahmadinejad and his supporters. In the other, Iran's embattled democratic movement and an array of forces that benefited from the status quo before Ahmadinejad came to power.

How can the United States exploit this struggle?

First, it should isolate Ahmadinejad and his cabal. Second, it should stimulate a serious discussion in Iranian society about the country's security interests. So far the regime has monopolized the discussion. This must end. And third, Bush should endorse the creation of a regional security organization in the Middle East. The more secure Iranians feel, the more likely the emergence of a peaceful, democratic movement.

—Michael McFaul and Abbas Milani

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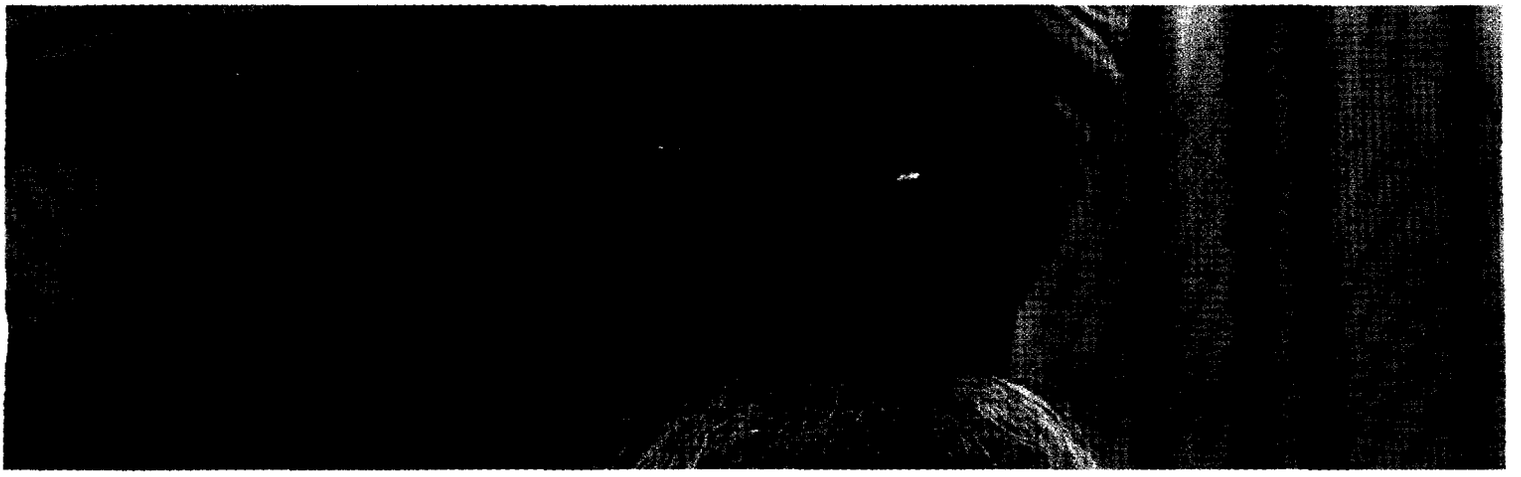

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